



CORRUPTION LAWS

A non-lawyers' guide to laws and offences in the UK relating to corrupt behaviour

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

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Authors: Nick Maxwell and Ben Cowdock

Editor: Robert Barrington

Design: Philip Jones

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Executive Summary

The United Kingdom has legislated against corruption in various forms since the late 19th Century, this itself drawing on a longer tradition in British law. The Bribery Act 2010 is a recent and landmark addition to the legislative environment in the UK for corruption.

However, the Bribery Act does not address all forms of corrupt behaviour. Laws against money laundering, fraud and theft may be applied to detect, deter and recover the proceeds of corruption. In addition, legislation covers other types of corrupt behaviour both in public office and the private sector.

The purpose of this paper is to inform all interested parties both domestically and overseas about the breadth of UK legislation which may have some application to countering bribery, corruption and related offenses like money laundering. It is a non-lawyers' guide, and is therefore not a substitute for a detailed review of the legislation, but it is intended to be an easy entry point to stimulate further enquiry.

"The abuse of entrusted power for private gain"

Transparency International Definition of Corruption¹

The paper demonstrates that not all of these types of corrupt behaviour are legislated against explicitly in the UK. For example, there is no explicit legislation to address cronyism or nepotism. In most cases, corruption offences are covered by a complex patch-work of legislation and offences, much like bribery before the advent of the Bribery Act.

In the course of this research, Transparency International UK has identified 45 pieces of legislation relevant to fighting corruption, which account for 162 criminal offences on the statute book. There are also a number of codes of conduct and guidelines published by the government intended to promote high standards of behaviour amongst MPs and Civil Servants.

Within the constituent nations of the United Kingdom there are different legal systems; some legislation applies solely to certain jurisdictions, other to the United Kingdom as a whole. English Law applies in England and Wales, Northern Irish Law is effective in Northern Ireland, and Scots Law covers Scotland. English and Northern Irish Law are based on common law principles, whereas Scots law is based in civil-law principles, with some elements of the common law. In many cases, Scotland and Northern Ireland have their own legalisation relevant to prohibiting the various corrupt acts. Throughout this paper it should be assumed that all the information is applicable to England and Wales unless otherwise stated. Notable differences involving devolved legislatures are signposted where relevant.

This paper aims to serve as a reference document for the study of how UK legislation prohibits and controls for various forms of corrupt behaviour. It is believed to be correct as of the close of the 2014/15 Parliament and up to the 2015 General Election. Transparency International UK welcomes comments and feedback to expand and clarify the reference sections for future editions.

¹ http://www.transparency.org/whoweare/organisation/faqs_on_corruption [Accessed 16 March 2016]

1. Summary of legislation in relation to major types of corrupt behaviour

Despite the large number of laws and offences related to corruption in the UK, several basic corruption types are not specifically legislated against in the UK.

The following table makes clear where legislation explicitly prohibits or guards against specific corrupt behaviour.

Major type of corrupt behaviour	Is the legislative framework in the UK robust?
Bribery	Yes
Trading in influence	Partial
Cronyism and nepotism	No
Undeclared conflicts of interest	Partial
Fraud and Embezzlement	Yes
Political corruption and Electoral fraud	Yes
Abuse of function	Partial
Money laundering of the proceeds of corruption	Partial

Types of corruption	Covered by the Bribery Act?	Covered in other UK legislation?
Bribery	Yes	
Corrupt hiring practices	Yes	
Bribes masked as commissions	Yes	
Bribes disguised as charitable donations	Yes	
Small bribes and facilitation payments	Yes	
Excessive hospitality as bribery	Yes	
Direct cash payments as bribes	Yes	
Electoral treating	Yes	Yes
Electoral bribery	Yes	Yes
Disproportionate Favours	Partial	Yes
Undeclared conflicts of interest	No	Yes
Fraud and Embezzlement	No	Yes
Electoral fraud	No	Yes
Undue electoral influence	No	Yes
Whistleblowing	No	Yes
Abuse of function	No	Partial
Money Laundering	No	Partial
Trading in influence	No	Partial
Prohibited political contributions	No	Partial
Lobbying abuse	No	Partial
Cronyism and nepotism	No	No
Revolving door abuse	No	No

2. Overview of law enforcement agencies

Not counting individual police forces, our research identifies over 60 specialist enforcement, oversight and investigative agencies involved in the policing of offences directed against corruption behaviour. There are also a number of agencies that are specifically tasked with investigating and preventing corruption in the UK. The full list of these can be seen in Annex 1.

According to the 2014 UK Anti-Corruption Plan, the National Crime Agency (NCA) was established in October 2013 to lead, coordinate and support the operational response to serious and organised crime, including economic crime and ‘oversee’ the national law enforcement response to bribery and corruption.²

The NCA is mandated to work closely with the Serious Fraud Office (SFO); Regional Organised Crime Units and local police forces, both of which deal with domestic corruption cases (except law enforcement corruption); Police Scotland and the Police Service of Northern Ireland (PSNI); and financial regulators, such as the Financial Conduct Authority.

The SFO was established in 1987 (Criminal Justice Act 1987) and operates under the “Roskill model”, whereby teams of investigators, accountants, prosecutors, experts and external counsel work collaboratively on an investigation from the outset, led by a case manager. The exact distinction between the bribery and corruption cases that the SFO leads on and the NCA leads on remains unclear. However, the SFO generally leads on cases where corporate offences are being investigated or complex legal or accounting investigative skills are required. According to the 2014 UK Anti-Corruption Plan,³ around half of the SFO’s operational capability is now directed towards investigating bribery and corruption.

To deal with corruption allegations linked to law enforcement bodies themselves, the NCA, all local police forces, Police Scotland, PSNI, National Offender Management Service (NOMS) and HM Revenue & Customs have dedicated anti-corruption units.

On the 29th May 2015, the remit of the Metropolitan Police’s Proceeds of Corruption Unit and the City of London Police (CoLP)’s Overseas Anti-Corruption Unit (OACU) transferred to the new NCA unit, named the International Corruption Unit (ICU). In partnership with the Department of International Development (DfID) the ICU’s stated remit is that it:

- investigates international corruption cases and related money laundering
- investigates offences committed under the UK Bribery Act 2010 involving UK –based companies/nationals or international bribery with a UK nexus
- traces and recovers the proceeds of international corruption
- supports foreign law enforcement agencies with international anti-corruption investigations
- engages with government and business to reduce the UK’s exposure to the proceeds of corruption

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388894/UKAntiCorruptionPlan.pdf [Accessed 31 March 2016]

³ <https://www.gov.uk/government/publications/uk-anti-corruption-plan> [Accessed 31 March 2016]

The ICU also works with HM Treasury in relation to the enforcement of financial sanctions.⁴ As it is funded by DfID, the ICU's primary focus is around the 29 'priority countries', or major recipient countries of DFID aid and development spending. The OACU will continue to work on current cases however; it will not be taking on any new work following the May 2015 merger.⁵ In addition to this the NCA also has a dedicated Financial Intelligence unit (UKFIU) which receives, analyses and distributes financial intelligence gathered from Suspicious Activity Reports (SARs).

Two regional differences in law enforcement refer to the SFO and the NCA. The SFO's jurisdiction does not include Scotland, and its function is performed by the Scottish Serious and Organised Crime Division. The National Counter Corruption Unit in Scotland whose dual remit is to tackle internal corruption within Police Scotland, and to tackle fraud in the wider public sector, does not have a direct counter-part in either the England and Wales or the Northern Ireland jurisdictions, although many public bodies have internal anti-fraud units.

Separate prosecution services naturally follow from the three discrete legal systems in operation within the United Kingdom: England and Wales are serviced by the CPS, the SFO and the Director of Public Prosecutions. Scotland prosecutes through the Crown Office, Procurator Fiscal Service, and the Lord Advocate. Northern Ireland prosecutes through the Public Prosecution Office, the SFO and the Director of Public Prosecutions for Northern Ireland.

⁴ <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/international-corruption-unit-icu> [Accessed 31 March 2016]

⁵ <https://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/oacu/Pages/default.aspx> [Accessed 31 March 2016]

3. Corruption laws

For each major type of corrupt behaviour, this paper sets out a definition for the corrupt behaviour, and describes the existing laws that guard against that type of corrupt behaviour, the specific offences under that law and the relevant enforcement agencies. The paper also sets out variations in practice in how the corrupt behaviour can manifest itself.

The following corrupt behaviours are considered:

- bribery
- trading in influence
- cronyism and nepotism
- undeclared conflicts of interest
- fraud and embezzlement
- political corruption and electoral fraud
- abuse of function

3.1 Bribery

Definition

The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action to improperly perform their job, role or function. Inducements can take the form of gifts, loans, fees, rewards or other advantages (taxes, services, donations etc.) – Transparency International⁶

Law	Offences/Offending Behaviour	Enforcement (Beyond police)
Bribery Act 2010	Offering, promising or giving a bribe (be it financial or another advantage) to another person, with the intention that that person, or a third party, perform a relevant function improperly, or to reward them for such improper performance, or that the acceptance of that advantage would itself constitute improper performance. Or offering a bribe with knowledge or belief that acceptance of the bribe is not permitted (Section 1)	NCA OACU SFO Crown Prosecution Service (CPS)
	Requesting, agreeing to receive or accepting a financial or other advantage from another person intending that the consequence of that action be the improper performance of a relevant function, or the advantage itself constitute an improper performance (Section 2)	NCA OACU SFO
	Bribing a foreign public official, with the intention of influencing them in their capacity as a foreign public official the intention of obtaining or retaining business or an advantage in the conduct of business (Section 6);	CPS
	Failure of a commercial organisation to prevent bribery (Section 7)	SFO

⁶ <https://www.transparency.org/glossary/term/bribery> [Accessed 31 March 2016]

	A senior officer of a commercial organisation with close UK connections can be found personally liable if the organisation commits the offence of bribery and he/she consented or connived in this (Section 14)	SFO
Criminal Law Act 1977	Misconduct in a public office (common law offence); Conspiracy to commit misconduct in a public office, which would include the payer of the bribe, Section 1(1), Criminal Law Act 1977.	NCA
Constitutional Reform and Governance Act 2010	For civil servants: receiving gifts, hospitality or benefits of any kind from a third party which might be seen to compromise their personal judgement or integrity. (Paragraph 7 of the Civil Service Code 2010)	The Civil Service Commission is responsible for investigating potential violations of the code.
Criminal Justice and Courts Act 2015	Section 26 relates to corrupt or other improper exercise of police powers and privileges. A police constable listed in subsection (3) commits an offence if he or she— (a) exercises the powers and privileges of a constable improperly, and (b) knows or ought to know that the exercise is improper	NCA CPS

Overview

Bribery is a major form of corruption that undermines economic and social progress across the world. Depending on the jurisdiction, it can manifest via a range of processes, from very large payments to excessive gifts and hospitality. In the UK facilitation payments are also considered bribes under the Bribery Act.

Active bribery refers to the offence committed by the person who promises or gives the bribe; as contrasted to *passive bribery*, which is the offence committed by the individual who receives the bribe. Passive bribery could be seen as a misleading term however as often this offence will entail a person actively soliciting a bribe. Active bribery is often defined as the supply side, passive bribery as the demand side.⁷

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, simply known as the OECD Anti-Bribery Convention, establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective.⁸

Chapter 3 of the United Nations Convention against Corruption (UNCAC) specifically calls on states to adopt legislative and other measures, to establish a criminal offence of the bribing national public officials (active and passive), the bribery of foreign public officials and officials of public international organisations, and bribery in the private sector.⁹

⁷ <http://www.u4.no/glossary/active-and-passive-bribery/#sthash.sb0aVHsX.dpuf> [Accessed 31 March 2016]

⁸ <http://www.oecd.org/corruption/oecdantibriberyconvention.htm> [Accessed 31 March 2016]

⁹ <https://www.unodc.org/unodc/en/treaties/CAC/> [Accessed 31 March 2016]

Key legislation

The Bribery Act 2010 applies to all relevant offences committed after 1 July 2011. Any conduct prior to this date falls under the previous legislative regime comprising the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Acts 1906 and 1916, and the common law offence of bribery, all of which were replaced by the 2010 Act. The Bribery Act has two general offences of bribery: active (the giving or promising of an advantage) and passive (the requesting or receiving of a bribe), the action of which is intended to induce or reward the improper performance of a function. Importantly, even if the bribe is not taken or given, offering in the knowledge that accepting the bribe comprises improper performance is also an offence.

No distinction is made between public officials and private individuals. The focus of misconduct is the function that the person is performing, regardless of in which sector that function is being performed. Section 3 of the Act defines the scope of a function or activity, and what is defined as 'relevant' for the purposes of Section 1 and 2. There are four possible relevant functions or activities:

- any function of a public nature
- any activity connected with a business
- any activity performed in the course of a person's employment
- any activity performed by on or behalf of a body of persons (whether corporate or unincorporated)

The explanatory notes to the Act confirmed that activities connected with a business or performed in the course of a person's employment straddle the private/public divide.¹⁰

The only distinction drawn between the public and private sectors is in the separate Section 6 offence of the Act, which implements the OECD Convention by specifically prohibiting the bribery of foreign public officials. Section 6(5) of the Act defines a foreign public official as an individual who holds a legislative, administrative or judicial position of any kind, or exercises a public function for a public agency or public enterprise on behalf of a country or territory outside the United Kingdom. Unlike the general offences of bribery, it only covers active bribery, and "culpability is not premised on any intention to elicit 'improper performance'". In order to commit this offence, the person giving the bribe must aim to influence the foreign public official in his or her official capacity and intend to acquire or retain business. In some cases, bribery of foreign public officials can be prosecuted under Section 1, though it will then be necessary to prove the improper performance element.

Importantly, Section 12 of the Bribery Act provides extraterritorial jurisdiction, with the ability to prosecute bribery committed anywhere in the world by an individual or organisation with a "close connection" with the UK. For example, courts in the UK will have jurisdiction if the commercial organisation is formed or incorporated in the UK. In addition, the Section 7 offence applies to any commercial organisation that carries out its business or part of its business in the UK even if the acts or omissions forming the offence take place inside or outside the United Kingdom.

Excessive hospitality and gifts may be punishable under Sections 1, 6 and 7 of the Act, providing the elements that are required for each offence are presented. While the degree of lavishness of the hospitality is used to determine whether it is bribery, the particular circumstances of each case are considered.

¹⁰ <http://www.legislation.gov.uk/ukpga/2010/23/notes%20%20> Para.28 [Accessed 31 March 2016]

Section 7 of the Act creates an offence of 'failure by a commercial organisation to prevent bribery by a person associated with it'. This represents a substantial extension of the law on corporate liability. Ordinarily, a company can only be guilty of an offence through the conduct of a "directing mind and will". Here, if an associated person's conduct would amount to a bribery offence and a bribe is given with the intention of obtaining or retaining business for a company, or obtaining or retaining an advantage in the conduct of business for a company, then the company is guilty of an offence unless it can prove on the balance of probabilities that it had in place adequate procedures designed to prevent persons associated with the company from undertaking such conduct.

Section 7(3) makes it clear that a commercial organisation can be liable for conduct amounting to a Section 1 or 6 offence on the part of a person who is neither a UK national or resident in the UK, nor a body incorporated or formed in the UK. This feature of the Bribery Act incentivises companies to monitor and supervise the activities and procedures of joint venture parties and third parties in their supply chains, to ensure that they would be afforded the protection given to commercial organisations with the adequate procedures defence at Section 7(2). A foreign subsidiary of a UK company can cause the parent company to become liable under Section 7 when the subsidiary commits an act of bribery in the context of performing services for the UK parent.

However, the UK parent might still be liable for the actions of its subsidiary in other ways such as false accounting offences or under the Proceeds of Crime Act 2002 (POCA). Section 14 of the Act allows for senior officers of a corporate body to be prosecuted if an offence under Sections 1, 2 or 6 has been committed by the body corporate, with their consent or connivance. They would be guilty of the same offence as the body corporate.

Section 14 of the Bribery Act allows companies and other bodies corporate to be prosecuted as if they were individuals. This approach is common throughout the criminal law in England and Wales as such bodies are regarded in law as legal persons.

Section 9 of the Act requires the Secretary of State to provide guidance on such procedures. The guidance is published by the Ministry of Justice and is based around six principles: proportionate procedures, top-level commitment, risk assessment, due diligence, communication (including training) and monitoring and review.¹¹ TI-UK has produced its own guidance to the Act for commercial organisations.¹²

Enforcement

In England and Wales, the SFO is the lead agency for investigating and prosecuting overseas corruption for corporate entities. As previously mentioned, OACU will be wound down during 2017 with its functions and responsibilities being transferred to the ICU within the NCA. In theory, therefore, the ICU will take on cases of *individuals* committing bribery overseas. The CPS prosecutes overseas and domestic bribery investigated by the police, with the comparable Crown Office and Procurator Fiscal Service tasked with prosecuting crime in Scotland. As stated in Section 10 of the Act, any prosecutions under the Act must receive personal consent from the Director of Public Prosecutions (DPP) or the Director of the Serious Fraud Office (DSFO).

¹¹ <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf> [Accessed 31 March 2016]

¹² <http://www.transparency.org.uk/our-work/business-integrity/bribery-act> [Accessed 31 March 2016]

Individual offences under the Bribery Act on summary conviction, less serious offences, are liable to a maximum of 12 months imprisonment, a fine not exceeding the statutory maximum (£5,000) or both. Conviction on indictment, for more serious offences, carries a maximum penalty of 10 years' imprisonment a fine, or both. Commercial offences under Section 7 can only result in a fine. The sentencing guidelines indicate that the court should ensure the fine is large enough to have a real economic impact on the company, "which will bring home to both management and shareholders the need to operate within the law".¹³ The court is given the discretion to impose a fine that would put the company out of business if this was felt to be an acceptable consequence.¹⁴ The POCA can be used by prosecuting bodies to recover criminal assets, while the Company Directors Disqualification Act 1986 allows the disqualification of directors for general misconduct.

Since the Act's implementation on 1 July 2011 there have not been many prosecutions. The SFO secured its first prosecution in the summer of 2013, with other prosecutions coming from the CPS. One of the earliest prosecutions was that of Sustainable AgroEnergy Plc, which resulted in Stuart Stone being sentenced to six years of prison under the Bribery Act. In September 2015 there was the first concluded settlement under Section 7 for corporate failure to prevent bribery by a third party.¹⁵ Since then, the Sweett Group have also been found guilty of a Section 7 offence, pleading guilty on 18 December 2015 to a charge of failing to prevent an act of bribery intended to secure and retain a contract with Al Ain Ahlia Insurance Company (AAAI), and ordered to pay £2.25m.¹⁶

Deferred Prosecuting Agreements (DPAs) were introduced in Section 45 of the Crime and Courts Act 2013 and came into force on 24 February 2014. They may be used in certain economic crime cases, such as bribery, that apply to organisations rather than individuals. A DPA is a voluntary agreement between a prosecutor and a commercial organisation, where in return for agreeing to and following a number of conditions, the criminal prosecution is deferred. This agreement is subject to approval by a judge who in accordance with the Act must deem it to be fair, reasonable and proportionate and in the interests of justice.

First UK use of a DPA

The first application for a DPA was approved by the court on 30th November 2015. The SFO concluded the case against Standard Bank Plc (now known as ICBC Standard Bank Plc) ("Standard Bank"), who had been indicted alleging failure to prevent bribery contrary to Section 7 of the Bribery Act 2010. This indictment was suspended immediately after the DPA was approved.

As a result of the DPA, Standard Bank will pay financial orders of US\$25.2 million and will be required to pay the Government of Tanzania a further US\$7 million in compensation. The bank also agreed to pay the SFO's reasonable costs of £330,000 in relation to the investigation and subsequent resolution of the DPA.¹

¹ <https://www.sfo.gov.uk/2015/11/30/sfo-agrees-first-uk-dpa-with-standard-bank/> [Accessed 16 March 2016]

¹³ https://www.sentencingcouncil.org.uk/wp-content/uploads/Fraud_bribery_and_money_laundering_offences_-_Definitive_guideline.pdf [Accessed 31 March 2016]

¹⁴ Ibid. [Accessed 31 March 2016]

¹⁵ <http://hsfnotes.com/fsrandcorpcrime/2015/09/30/scottish-authorities-announce-first-settlement-of-the-criminal-offence-of-failure-to-prevent-bribery/> [Accessed 31 March 2016]

¹⁶ <https://www.sfo.gov.uk/cases/sweett-group/> [Accessed 31 March 2016]

Other regulation and legislation

In the public sector, the Civil Service Code states that Civil Servants must not, “accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise your personal judgement or integrity”.¹⁷ The statutory basis for the Civil Service code can be found in Part 1 of the Constitutional Reform and Governance Act 2010. Similarly, the Ministerial Code states that no minister should accept gifts, hospitality or services from anyone who would, or might appear to, place him or her under an obligation.¹⁸ The Criminal Justice and Courts Act 2015 added the specific offence of police corruption to the existing laws relating to bribery. The Act states: A police constable listed in subsection (3) commits an offence if he or she - (a) exercises the powers and privileges of a constable improperly, and (b) knows or ought to know that the exercise is improper.¹⁹ The maximum sentence for Police Corruption is 14 years.

Variations in practice

Variations in practice described here, may fall under Bribery Act offences.²⁰

Direct cash payments as bribes - Many bribes globally still come in the form of cash payments, alongside “in kind benefits”, such as luxury goods. This is especially true in countries with cash economies. Even though cash is the most straightforward means of bribery, the way that the bribe money is routed can be quite complex and involve several stages of concealment.

Excessive hospitality as bribery - Offering and receiving hospitality is a widespread business practice. It can be an effective way to create, build and strengthen relationships that are an important part of many business operations. The danger is when it becomes excessive or lavish, or is offered in situations such as a restricted period during a tender, hospitality can easily cross the line from an acceptable business practice into an illegal bribe. Regulators are likely to ask whether hospitality is ‘reasonable, proportionate and bona fide’. Any hospitality, offered or received, that might not pass this test should be treated as a red flag.

Favours - Bribery takes many forms and one of the most difficult to pin down is the exchange of favours. There will always be some individuals or organisations that can promote the interests of a public official or a business person through privileged connections or status. This person may then be expected to “return the favour” – for example, providing potential contractors with confidential bidding information on rival bids, choosing a particular contractor rather than other more suitable ones, or granting an export license. Money does not necessarily change hands. Cronyism and nepotism are also examples of these types of bribery, where favours are given to decision-makers’ friends or relations to extract unfair advantage. Such favours may come in many forms, including jobs, residence permits, or the provision of education and healthcare.

Small bribes and facilitation payments - Facilitation payments are small bribes, also called a ‘facilitating’, ‘speed’ or ‘grease’ payment, made to secure or speed up a routine or necessary process to which the payer is entitled anyway. In this way, a transaction is “facilitated.” For instance, paying off a customs official to release held goods (which he/she is obligated to do anyway) would be considered a facilitation payment, as would a bribe paid to obtain a routine government stamp. Facilitation payments have always been illegal under UK law per se, the position was not changed by the Bribery Act 2010.

¹⁷ <https://www.gov.uk/government/publications/civil-service-code/the-civil-service-code> [Accessed 21 April 2016]

¹⁸ <https://www.gov.uk/government/publications/ministerial-code> [Accessed 31 March 2016]

¹⁹ <http://www.legislation.gov.uk/ukpga/2015/2/section/26/enacted> [Accessed 31 March 2016]

²⁰ Variations originally published in <http://www.transparency.org.uk/publications/how-to-bribe-a-typology-of-bribe-paying-and-how-to-stop-it/> [Accessed 31 March 2016]

Bribes disguised as charitable donations - Individual and corporate involvement in charities can benefit communities and good causes, and provide good PR. However, charitable donations can also be used as vehicles for bribes. For example, the charity may be connected to an individual (such as a government official) who then uses his or her influence to give special preference to the donor. Trustees and board members of charities may be politicians, officials, and other highly placed and influential people. The donations they ask for may directly or indirectly benefit them personally, such as suggesting a hospital should be built using a relative's construction company. Sometimes, a charity may be simply a front for hiding or receiving bribes.

Bribes masked as commissions - Paying commissions to an agent or intermediary as reward for bringing in new business is widespread in commercial transactions, and is usually perfectly legitimate. However, there are situations in which commissions are used as bribes, and these are usually secret or not properly disclosed. For example, an intermediary can pay a bribe to win business for its corporate client out of the commission, and recover the money through an inflated invoice.

Corrupt hiring practices - Offering jobs or internships to relatives or associates of public officials in order to gain undue advantage with that same official may be a form of active bribery. This form of corruption is broadly covered by the Bribery Act 2010. An example of this which could have been punished under the Bribery Act was the 2015 BNY Mellon case, where a settlement was reached after breaching the US' Foreign Corrupt Practices Act (FCPA). BNY Mellon's London office has been providing internships and work experiences to family members of officials of a Middle Eastern sovereign wealth fund.²¹

Immunity, restrictions or limited coverage

Internationally the Bribery Act is one of the strictest pieces of anti-bribery legislation, primarily due to the corporate offence of failing to prevent bribery. However, diplomatic agents, members of staff of diplomatic missions and their families have immunity due to the Diplomatic Privileges Act 1964, while the Queen, foreign sovereigns or heads of state, their families and private servants are immune by virtue of the State Immunity Act 1978. Section 13 of the Act provides a defence for member of the intelligence services, and the armed forces on active service, when they are properly exercising any function of their role.

²¹ <http://www.lexisnexis.com/legalnewsroom/corporate/b/fcpa-compliance/archive/2015/08/25/bank-of-new-york-mellon-settles-fcpa-charges-regarding-internships-for-relatives-of-sovereign-wealth-fund-officials.aspx> [Accessed 31 March 2016]

3.2 Trading in influence

Definition

- i. The direct or indirect promise, offering, or giving to a person of an undue advantage, to ensure the person abuses his or her real or supposed influence to obtain, from an administration or public authority, an undue advantage for the original instigator, or any other person or entity
- ii. The direct or indirect solicitation or acceptance by a person of an undue advantage, for himself or herself, to ensure the person abuses his or her real or supposed influence to obtain, from an administration or public authority, an undue advantage for the original instigator, or any other person or entity

Adaptation of UNCAC Article 18

Law	Offences/Offending Behaviour	Enforcement (Beyond police)
The UK does not criminalise the trading of influence as such, however the following legislation and regulation may provide some protection against aspects of the relevant corrupt behaviour		
The Bribery Act 2010 would apply if the beneficiary was carrying out illegitimate activities to influence the public official	All four offences: offering, promising or giving a bribe to another person; requesting, agreeing to receive or accepting a bribe from another person; bribing a foreign public official; and a corporate offence of failing to prevent bribery. The Act could potentially be used to sanction political bribery if giving or receiving a financial or other advantage in connection with the "improper performance" of a position of trust can be argued.	NCA OACU SFO CPS
Political donations are regulated by the Political Parties, Elections and Referendums Act 2000	There are 112 offences relating to political donations established by the Political Parties, Elections and Referendums Act 2000 (PPERA). See the Electoral Commission's website for the complete list. ²²	The Electoral Commission

Overview

Trading in influence, also known as 'influence peddling', is where an individual abuses their position in the decision-making process for a third party, in return for certain benefits. It relates to lobbying, political donations and corruption in the political sphere. There is no comprehensive prohibition on trading in influence in the UK, as set out by UNCAC. It is often difficult to specify the point at which illegality occurs for 'trading in influence' corrupt behaviour or when the patchwork of offences stated above may apply.

²² http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/106737/Table-of-offences-and-sanctions_for_EP.pdf [Accessed 19 April 2016]

Key legislation

The 2013 Implementation Review Group UNCAC report assessed that regarding trading in influence, the general offences in the Bribery Act 2010 are broad enough to cover most circumstances related with the behaviour in question.²³ The Bribery Act 2010 may be used to prosecute political bribery if the giving or receiving of a private benefit was connected with the improper performance of a “relevant function or activity”. It can also apply if the offer of a bribe is not taken; if the bribe giver knows that acceptance of the bribe would constitute improper performance. It is punishable with a maximum of 10 years’ imprisonment.

PPERA is the principal piece of legislation governing political contributions. It imposes controls on any donation or loan to a political party (including its local branches) over £500 in value. These contributions must come from a “permissible” source, which are sources tied to the UK, for example, an individual on a UK electoral register, a company carrying out business in the UK or a UK-registered trade union. When contributions from a single one of these sources aggregate to over certain financial thresholds²⁴ within a calendar year they must be reported to the Electoral Commission. The reporting cycle for these disclosures is quarterly. This information is then published online for public inspection via the Commission’s web portal.²⁵

PPERA also includes controls on contributions to other party political entities, including holders of elective office (MPs, councillors etc.), political party members and groups wholly or mainly made-up of party members (members’ associations). And it also contains controls on contributions to referendum campaigners, non-party campaigners (those campaigning at elections but not standing candidates) and unincorporated associations making political contributions over £25,000.

There are separate rules on donations to candidates, which are contained in the RPA 1983 and the various other election Orders, for example, The Police and Crime Commissioner Elections Order 2012. These rules require that any donations to candidates over £50 must come from a permissible source and be reported after the election. However, they do not currently cover commercial loans to candidates.

Enforcement

The SFO is the lead agency for the enforcement of the Bribery Act 2010. The CPS prosecutes overseas and domestic bribery investigated by the police, with the comparable Crown Office and Procurator Fiscal Service tasked with prosecuting crime in Scotland. If the person bribing a politician is from overseas then it will be a matter for the SFO or the NCA, depending on the nature of the person/company involved in the bribery. As stated in Section 10 of the Bribery Act, any prosecutions under the Act must receive personal consent from the Director of Public Prosecutions (DPP) or the DSFO.

The Electoral Commission is the body tasked with monitoring and enforcing the rules on political contributions under PERA and the relevant election Orders. It is an independent body which reports directly to Parliament, specifically to the Speaker’s Committee. It was created by PERA, which implemented most of the recommendations of the Committee on Standards in Public Life’s Fifth Report,²⁶ and has the powers to investigate alleged breaches of the rules and

²³Conference of the States Parties to the United Nations Convention against Corruption, *Implementation Review Group, Fourth Session*, (United Nations, 2013) pg.4

²⁴ £7,500 for contributions to a party HQ and £1,500 for contributions to its local branches

²⁵

<http://search.electoralcommission.org.uk/?currentPage=0&rows=10&sort=AcceptedDate&order=desc&ab=1&et=pp&et=ppm&et=tp&et=perpar&et=rd&prePoll=false&postPoll=true> [Accessed 31 March 2016]

²⁶

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336870/5thInquiry_FullReport.pdf [Accessed 31 March 2016]

impose civil sanctions in particular circumstances. However, it is not a prosecuting authority and where criminal sanction is deemed necessary (or the only option available) this would be matter for the relevant prosecuting authority.

There are civil sanctions for most offences under PPERA, which overlay criminal sanctions. These range from fixed monetary penalties to variable monetary penalties to enforcement notices that halt the financial operations of a political party. These apply to a variety of circumstances, for example, from failing to submit regular or accurate financial reports to the Commission on time to incidents where there is reasonable evidence to suggest the rules are about to be broken and that the breach would significantly damage the public's confidence in the rules. The civil sanctions are akin to those available under the Regulatory Enforcement and Sanctions Act 2008. However, some sanctions have been retained as criminal only, for example, attempting to evade the restrictions on donations (Section 61).

Other regulation and legislation

Law	Offences/Offending Behaviour	Enforcement (Beyond police)
The conduct of members of both the House of Lords and the House of Commons, is subject to the rules as set out in Codes of Conduct and resolutions or guidance relating to the conduct of Members	<p>[For the House of Commons] The Code of Conduct for Members of Parliament expressly bans any acceptance of a bribe to influence his or her conduct as a member (s.12) and prohibits advocacy which seeks to confer benefit exclusively upon a body (or individual) outside of parliament, from which a member has received a financial benefit (s.11 and Resolutions of 6 November 1995 and 15 July 1947 as amended). There are also restrictions on former MPs lobbying other MPs or Ministers within six months of leaving Parliament.</p> <p>[For the House of Lords] The Code of Conduct for Members of the House of Lords prohibits any Member from acting as a paid advocate in any proceeding of the house (s.14).</p>	<p>House of Commons Parliamentary Commissioner for Standards</p> <p>House of Commons Committee on Standards and Privileges</p> <p>House of Lords Commissioner for Standards</p> <p>House of Lords Sub-Committee on Lords' Conduct and the Committee for Privileges and Conduct</p>
The Interests of Members of the Scottish Parliament Act 2006 (Section 17); Scotland Act 1998 (Section 39); Northern Ireland Act 1998 (Section 43); Government of Wales Act 2006 (Section 36)	The Welsh and Northern Irish Assemblies and the Scottish Parliament all created identical offences prohibiting members from advocating or initiating any cause or matter on behalf of any person, by any means specified in the provision, in consideration of any payment or benefit in kind of a description so specified, or urging, in consideration of any such payment or benefit in kind, any other member to advocate or initiate any cause or matter on behalf of any person by any such means.	Respective Standards Commissioners and Standards Committee

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014²⁷	For consultant lobbyists - Carrying on the business of consultant lobbying without being registered (Section 12).	The Registrar of Consultant Lobbyists (a corporate sole, exercising its functions on behalf of the Crown, appointed by the Minister) will enforce civil penalties.
The Constitutional Reform and Governance Act 2010	For Civil Servants - A requirement for a code of conduct for Civil Servants which specifically requires Civil Servants to carry out their duties in accordance with the core Civil Service values of integrity, honesty, objectivity and impartiality.	The Civil Service Commission
Honours (Prevention of Abuses) Act 1925	Specifically for the prevention of granting honours in return for private gain.	House of Lords Commissioner for Standards CPS

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 ("Lobbying Act") requires all consultant lobbyists to be registered with the Registrar of Consultant Lobbyists. Coming into effect on the 19th September 2014 this law intends to provide transparency about who consultant lobbyists are representing in meetings with Ministers, Permanent Secretaries and / or Special Advisers in the UK Government. Under this law, it is an offence if a consultant lobbyist fails to register before lobbying ministers or permanent secretaries and if convicted will face a fine not exceeding the statutory maximum of £7,500. The Registrar of Consultant Lobbyists is an independent office holder) and may impose a civil penalty on a person if they are satisfied that the person's conduct amounts to an offence under Section 12.

Northern Ireland's civil service is exempt from the reforms outlined in the Constitutional Reform and Governance Act. This exempts the NI civil service from establishing a Civil Service Commissioner, changes in management structures, and implementation and publication of a code of conduct.

The House of Commons code of conduct explicitly bans taking bribes for members of the House as well as forbidding giving special benefits exclusively to bodies or people outside the House in exchange for financial benefit. The House of Lords code of conduct also forbids any member from acting as a paid advocate. It is likely these offences would now fall under the Bribery Act.

²⁷ Came into force on 19 September 2014

A range of codes of conduct provide additional protection from trading in influence across the public sector. In particular, the Constitutional Reform and Governance Act 2010 require civil servants to carry out their public role according to the values of integrity, honesty, objectivity and impartiality.

The Interests of Members of the Scottish Parliament Act 2006 (Section 17); Scotland Act 1998 (Section 39); Northern Ireland Act 1998 (Section 43) and Government of Wales Act 2006 (Section 36) represent the devolved implementation of legislation that creates an offence of acting on the behalf of any person when receiving a payment or benefit.

Variations in practice

Political contributions – Contributions to a political party or a political campaign can be used as bribes and opportunities to engage in trading in influence. The simplest and most common scenario is when individuals, businesses or other special interest groups contribute large amounts of money to a political party or an election campaign. In return, a politician or public official would then be expected to promote the interests of whoever made the contribution, potentially in violation of their official duties. These contributions can include cash payments, gifts in-kind and loans.

Lobbying – Lobbying is an essential part of the democratic process. However, it can be done in a way that distorts the democratic process in favour of vested interests. Lobbying abuses include:

- **trading in influence:** when influence or access is provided in exchange for money or favours
- **opaque lobbying:** promoting a client's policy proposal or point of view to public officials whilst hiding their identity
- **dishonest lobbying:** submitting misleading evidence to a public official in order to benefit a client

The revolving door – The term 'revolving door' refers to the movement of individuals between positions of public office and jobs in the private sector, in either direction. Although this can bring benefits to both sectors, it can be abused by those who wish to use their positions of entrusted power for private gain. For example, an individual could seek to gain specialist knowledge and/or decision making power and exploit that experience for private gain in later private sector employment. The revolving door can undermine trust in government because of the potential for conflicts of interest and the increased risk of trading in influence.

The conflicts of interest associated with revolving door movements can occur before, during or after a role in government. For example:

- Public officials might allow the agenda of their previous private-sector employer to influence their government work.
- Public officials might abuse their power while in office to favour a certain company, with a view to ingratiating themselves and gaining future employment at that organisation.
- Former public officials who accept jobs with private sector employers might influence their former government colleagues to make decisions in a way that favours their new employer.
- Former public officials may use confidential information to benefit their new private sector employers, for example, during procurement procedures.

Immunity, restrictions or limited coverage

Significant gaps remain in the UK's legislative framework for trading in influence, particularly with regard to political contributions, lobbying and the revolving door.

While PPERA puts in place relatively robust requirements for the disclosure of political party contributions, there is no cap in place for political donations, despite the recommendations by the Committee on Standards in Public Life. The absence of a cap leaves UK political parties vulnerable to the risk that high value donations will encourage trading in influence.

There are also no controls on MPs undertaking paid for advisory services for lobbying organisations. During the 2014-15 Parliament, £3.4 million was paid to 73 MP's for external advisory roles. Payments for parliamentary advice is still allowed in the House of Commons, but prohibited in the House of Lords, Scotland and Wales.²⁸

The Lobbying Act includes a very limited definition of potential targets of lobbying. Within the scope of the rules, lobbying entails oral or written communication with Ministers and Permanent Secretaries and there is also the power under secondary legislation to extend the scope to special advisers. This means the act omits MPs who are not Ministers, councillors, staff of regulatory bodies, and all but the most senior members of the Civil Service. The Lobbying Act also seeks to regulate the activities of 'consultant lobbyists', which is estimated to be only 1 per cent of those who engage in lobbying activity.²⁹ As of 4 September 2015, the statutory register of lobbyists contained 96 lobbying companies, which is around less than four per cent of the total amount of organisations meeting the UK Government during the last quarter that data was available at that point in time.³⁰

In the UK, rules about the revolving door are overseen by a non-statutory advisory body – the Advisory Committee on Business Appointments (ACOBA) – which has no sanctions to deter non-compliance with the rules or powers to investigate alleged breaches. The system for scrutinising business appointments provides for case-by-case consideration of proposed appointments. However, this system only applies to Ministers and senior civil servants for two years after leaving office or Crown Service. There is no transparency about the movement of individuals between the public and private sector. This movement could be viewed as a corruption risk; a high-ranking public official may abuse the powers of their office by favouring a certain company, thus securing themselves a future job with that company.³¹ For example, there is no information on secondments to public regulators from the regulated sector, such as between a bank and the FCA.

MPs follow separate standards laid down in the House of Commons Code of Conduct. They have fewer restrictions on private-sector employment after retiring from public life, limited to not being allowed to lobby Ministers for six months after leaving office. For these six months MPs are unable to "use their privileged parliamentary pass for the purposes of lobbying".³² The House of Commons Code of Conduct seeks to promote good behaviour on a voluntary basis and has little in the way of a sanctions regime.

²⁸ <http://www.transparency.org.uk/publications/accountable-influence-bringing-lobbying-out-of-the-shadows/> [Accessed 31 March 2016]

²⁹ 17 APPC, Response by the Association of Professional Political Consultants (APPC) to the committee on standards in public life "lobbying: issues and questions paper", (July 2013) <http://www.appc.org.uk/appc-submission-to-lobbying-issues-and-questions/> [Accessed 31 March 2016]

³⁰ <http://www.transparency.org.uk/publications/accountable-influence-bringing-lobbying-out-of-the-shadows/> [Accessed 31 March 2016]

³¹ <http://www.transparency.org/news/pressrelease/2012-06-21-dangerous-relations-between-the-public-and-private-sectors> [Accessed 31 March 2016]

³² <http://www.publications.parliament.uk/pa/cm201516/cmcode/1076/107606.htm> [Accessed 31 March 2016]

3.3 Cronyism and nepotism

Definition

A form of favouritism whereby someone in public office exploits his or her power and authority to provide a job or favour to a family member (nepotism), friend or associate (cronyism), even though he or she may not be qualified or deserving - [Transparency International definition](#)

Law	Offences/Offending Behaviour	Enforcement (Beyond police)
There is no legislation in the UK that provides a blanket ban on cronyism and nepotism. However the following legislation and regulation may provide some protection against aspects of this form of corrupt behaviour		
Constitutional Reform and Governance Act 2010	The establishment of a Civil Service Commission with functions in relation to selections for appointments to the civil service and establishing the basis for a requirement for appointments to the civil service to be made on merit on the basis of fair and open competition	Civil Service Commission
Equality Act 2010 and 2006	The Equality Act 2010 prevents the discrimination of protected groups in a variety of situations, including at work. While this may form the basis of a legal challenge in claimed cases of nepotism or cronyism, there are no examples to provide evidence of this.	Equalities and Human Rights Commission
MPs' Scheme of Business Costs and Expenses.	MPs must complete a connected party declaration when employing staff members, indicating if they are a connected party.	Independent Parliamentary Standards Authority
Local Government and Housing Act 1989	Specifically for local government, Section 7 of the Local Government & Housing Act 1989 necessitates that every appointment to a paid office or employment under a local authority shall be made on merit.	Local Government Ombudsman
EU Directive 2004/18/EC, implemented in Public Contracts Regulations 2006	Rules on advertising and transparency that require the wide advertising of procurement bidding opportunities and the broad and timely pre-disclosure of all criteria for contract award.	The Office for Government commerce (Government Procurement Service)
Criminal Justice and Courts Act 2015 (If the favour or job is given by a police officer)	Corrupt or other improper exercise of police powers and privileges. A police constable listed in subsection (3) commits an offence if he or she: (a) exercises the powers and privileges of a constable improperly, and (b) knows or ought to know that the exercise is improper	NCA CPS

Overview

There is no UK legislation that comprehensively prohibits cronyism or nepotism. However, appointment based on merit is a consistent feature of public sector codes of conduct and parliamentarians have a disclosure obligation for employing family members.

Other regulation and legislation

Government guidance suggests that workers who suspect that they are being discriminated on the basis of cronyism or nepotism should raise a grievance or take their case to an employment tribunal.³³ The Equality Act 2010 prevents the discrimination of protected groups in a variety of situations, including at work. While this may form the basis of a legal challenge in claimed cases of nepotism or cronyism, there are no examples of the legislation having been used in this way.

As provided for in the Constitutional Reform and Governance Act 2010, civil servants are obliged to follow a code of conduct. This Act establishes a principle of objectivity as it specifically states “The code must require civil servants to carry out their duties— (a) with integrity and honesty, and (b) with objectivity and impartiality.”³⁴

For the UK Parliament, MPs must complete a connected party³⁵ declaration when employing staff members, indicating if they are a connected party, as set out in the MPs’ Scheme of Business Costs and Expenses. Data from this scheme is regularly published on the Independent Parliamentary Standards Authority (IPSA) web page. However separate information that could be correlated to identify the individuals hired is not included. The total annual figure for salaries for staff employed by MPs who have been declared as connected parties was £3,346,280.42 for the 2011/12 financial year.³⁶ Likewise, the Code of Conduct also demands that MPs register the name, relationship to them and job title of any family members employed using parliamentary allowances. The 2015/16 annual register of MPs’ interests shows that 129 out of 650 elected in May’s general election employ a family member or relation, including sons and daughters, nieces and nephews.³⁷

Specifically for local government, Section 7 of the Local Government & Housing Act 1989 necessitates that every appointment to a paid office or employment under a local authority shall be made on merit.

³³ <https://www.gov.uk/employer-preventing-discrimination/discrimination-during-employment> [Accessed 31 March 2016]

³⁴ http://www.legislation.gov.uk/ukpga/2010/25/pdfs/ukpga_20100025_en.pdf p.4, [Accessed 31 March 2016]

³⁵ A spouse, civil partner or cohabiting partner of the member; parent, child, grandparent, grandchild, sibling, uncle, aunt, nephew or niece of the member or of a spouse, civil partner or cohabiting partner of the member; or a body corporate, a firm or a trust with which the MP is connected

³⁶ <https://www.whatdotheyknow.com/request/119737/response/297275/attach/3/FOI2012%20A054%202012%2007%2019%20Final%20Response.pdf> [Accessed 31 March 2016]

³⁷ <http://www.telegraph.co.uk/news/newstoppers/mps-expenses/11706561/One-in-four-MPs-employs-a-family-member-the-full-list-revealed.html> [Accessed 31 March 2016]

Immunity, restrictions or limited coverage

Cronyism and nepotism remain relatively unrestricted and unregulated in UK public life. Whilst codes of conduct exist for Civil Servants, Diplomats and Ministers, the main barrier to overt cronyism remains public scrutiny and the fear of negative perception. The most common form of this public scrutiny comes from the media, for example in the aftermath of additions to the House of Lords. If those appointed to the House of Lords appear well connected to the Prime Minister, claims of cronyism will follow.³⁸ However, tangible powers to limit these practices are still missing. A potential gap in this area is the existence of an oversight body with the powers to sanction those public officials who have abused their position through cronyism or nepotism.

There are similar rules on hiring relatives in devolved governments with a few key exceptions:

The Welsh Assembly has no restrictions on Assembly Members (AM) hiring relatives but does have several reporting requirements. For example, Standing Order 3 requires Members who employ, with the use of public funds, a person who is a family member of that Member or another Member to notify the Welsh National Assembly, who in turn must make this information freely available.ⁱ

In Northern Ireland, members of legislative Assembly (MLAs) must reveal if they are paying a family member from their publicly-funded Office Cost Allowances. There are no rules prohibiting the practice and in 2011 approximately 40 per cent of MLAs employed family members.ⁱⁱ

In contrast, in 2009 the Scottish government banned Members of the Scottish Parliament from employing family members at taxpayers' expense from the end of 2015, with an immediate block on new appointments.

ⁱ http://www.assemblywales.org/memhome/pay-expenses-financial-interests-standards/employment_of_family_members.htm [Accessed 16 March 2016]

ⁱⁱ <http://www.bbc.co.uk/news/uk-northern-ireland-15463472> [Accessed 16 March 2016]

³⁸ <http://www.standard.co.uk/news/politics/david-cameron-accused-of-cronyism-after-naming-12-more-house-of-lords-peers-9656465.html> [Accessed 31 March 2016]

3.4 Undeclared conflicts of interest

Definition

When a public official fails to declare a situation in which they have a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties

Transparency International definition

Law	Offences/Offending Behaviour	Enforcement (Beyond police)
The common law offence of Misconduct in Public Office [As set out in <i>Attorney General's Reference No 3 of 2003</i> [2004] EWCA Crim 868]	An offence is committed when: -a public officer acting as such -wilfully neglects to perform his duty and/or wilfully misconducts himself -to such a degree as to amount to an abuse of the public's trust in the office holder -without reasonable excuse or justification.	NCA
Government of Wales Act 2006	Section 36(7)(a) makes it an offence for a Member to take part in Assembly proceedings without having complied with the Act and the Assembly's standing orders in regard to the registration and declaration of interests	Welsh Assembly Standards Commissioner and Standards Committee
Northern Ireland Act 1998 Northern Ireland Assembly Standing Orders 69 – 69C	Under Section 43(6) of the Act it is an offence if a member takes part in any proceedings of the Assembly without having registered an interest (ss2). This includes a member initiating or advocating any cause on behalf of a person, in return of a financial or other reward, or encouraging another member of the Assembly to do it on their behalf (ss4). Details regarding the registration of members' interests can be found in the Assembly Standing Orders 69 – 69C.	Committee on Standards and Privileges; Northern Ireland Assembly Commissioner; Police Service of Northern Ireland; Public Prosecution Service
Scotland Act 1998; and the Interests of Members of the Scottish Parliament Act 2006;	It is an offence to fail to register financial interests (including benefits in kind) or to fail to declare that interest before taking part in any proceedings of the Parliament relating to that matter. [Section 39 of 1998 & Section 17 of 2006]	Commissioner for Ethical Standards in Public Life in Scotland
Localism Act 2011, (Part 1 Chapter 7 Section 30)	A failure for local authority elected members to disclose a pecuniary interest on taking office and to disclose any unregistered pecuniary interests (including their partner's) in matters considered at meetings or by a single member. [Section 30 and 31]	Solely the Police

<p>The House of Commons Code of Conduct and rules relating to the Conduct of Members</p> <p>Code of Conduct for the House of Lords</p> <p>Register of Members' Financial Interests</p>	<p>Members of Parliament are required to disclose their financial interests including income, shareholdings and directorships on the Register of Members' Interests. However this does include the interests of MPs' family members.</p> <p>(Resolution of the House of 22 May 1974, amended on 9 February 2009)</p>	<p>Parliamentary Commissioner for Standards</p> <p>Commissioner for Standards in the House of Lords</p>
<p>Ministerial Code</p>	<p>Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.</p>	<p>Propriety and Ethics group within the Cabinet Office</p>
<p>The Constitutional Reform and Governance Act 2010, Civil Service code</p>	<p>The Civil Service code applies to all civil servants. Section 7 prohibits the acceptance of gifts or hospitality or other benefits from anyone which might reasonably be seen to compromise their personal judgment or integrity. Further, they are prohibited from being influenced by improper pressures from others or the prospect of personal gain.</p>	<p>The Civil Service Commission</p>
<p>The Constitutional Reform and Governance Act 2010, Civil Service Management code of conduct</p>	<p>This code sets out regulations and instructions to departments and agencies regarding the terms and conditions of service of civil servants. Civil servants must not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. Where a conflict of interest arises, civil servants must declare their interest to senior management. (Section 4.1.3)</p>	<p>The Civil Service Commission</p>

Overview

Undeclared conflicts of interest could be offending behaviour as per the common law offence of 'Misconduct in Public Office'. The three national devolved legislatures in the UK each criminalise a failure to declare financial interests, as does the Localism Act for local authorities in England and Wales. In the House of Commons, the House of Lord and for the civil service, codes of conduct exist to guard against this form of corrupt behaviour.

Key legislation

The principal criminal offences that apply to those in legislative functions are established in the devolved legislatures and in local government through the Government of Wales Act 2006, Northern Ireland Act 1998, the Scotland Act 1998; the Interests of Members of the Scottish Parliament Act 2006; and the Localism Act 2011 (Part 1 Chapter 7 Section 30). The Constitutional Reform and Governance Act 2010 established the civil service code and Civil Service Commission which provides a regulatory framework for undeclared conflicts of interest. The Civil Service Management code of conduct details how civil servants may invest in shareholdings unless their work provides them with relevant information or the ability to affect its price. In turn civil servants must provide information to their department regarding any business interests or holdings of shares that they or their close relatives hold.

The regime in Westminster is overseen by regulation and codes of conduct rather than by criminal offences.

Devolved Enforcement of undeclared conflicts of interest

Scotland

Alleged breaches of the rules on MSPs' interests can be made to the Commissioner for Ethical Standards in Public Life in Scotland (CESPLS), who is responsible for ensuring compliance with the rules and investigating any alleged breaches. If their investigation concludes there has been a substantiated breach, they will report the outcomes of their findings to the Scottish Parliament, which may impose its own sanctions, such as exclusion from debates for a prescribed period. Failure to comply with a sanction imposed by the Parliament is an offence. Where this occurs, it is for the CESPLS to refer them to the Procurator Fiscal, the prosecuting authority in Scotland.

Wales

Alleged breaches of the rules on AMs' interests can be made to the Assembly's Commissioner for Standards, who undertakes a preliminary investigation. If the Commissioner for Standards considers there is merit to pursue the matter further, it is referred to the Assembly's Standards of Conduct Committee. The Committee then submits reports to the Assembly, which may impose its own sanctions, such as exclusion from debates for a prescribed period. Alongside these civil measures, breaches of the code can also constitute a criminal offence, which would be a matter for the Director of Public Prosecution.

Northern Ireland

Alleged breaches of the rules on MLAs interests can be made to the Assembly's Commissioner for Standards, who is responsible for investigating allegations and reporting their findings to the Assembly's Code of Standard Practice (CoSP). The CoSP then submits reports to the Assembly, who may impose its own sanctions, such as exclusion from debates for a prescribed period. Alongside these civil measures, breaches of the code can also constitute a criminal offence, which would be a matter for the Director of Public Prosecutions for Northern Ireland.

Enforcement

The Committee for Standards of Public Life (CSPL) provides oversight of rules regarding the conduct of public officials. However, it does not have the power to investigate or take action on specific incidents of improper conduct.

The devolved legislatures of Scotland, Wales and Northern Ireland have criminal offences for failing to declare conflicts of interest, while the UK does not. The Parliamentary Commissioner for Standards, who is responsible for ensuring compliance with the rules and investigating any alleged breaches, may pursue allegations further by referring them to the Parliamentary Committee on Standards. The Committee then submits reports to the House, which may impose its own sanctions, such as exclusion from debates for a prescribed period. Unlike the arrangements in Scotland and Wales, there are no criminal offences for serious breaches of the UK code of conduct.

Immunity, restrictions or limited coverage

There are inconsistencies in what requirements exist to declare conflicts of interest at different levels of government. Much of the information that is collected on conflicts of interest is not available publically and is difficult for citizens to access it.

While Westminster MPs are obliged to ensure that no conflict arises,³⁹ there is no formal investigative or sanctions process around this obligation. The rules do not prevent a Westminster Member from holding a remunerated outside interest whether or not such interests are related to membership of the Houses of Parliament. No UK conflicts of interest regime obliges declarations of interests relating to family members (see “nepotism” section), apart from the limited exception of the Localism Act which requires local authority members to declare their interests as well as those of their partners.

³⁹ or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise

3.5 Fraud and Embezzlement

Definition

Fraud: The act of intentionally deceiving someone in order to gain an unfair or illegal advantage (financial, political or otherwise).

Embezzlement: When a person holding office in an institution, organisation or company dishonestly and illegally appropriates the funds and goods that he or she has been entrusted with for personal enrichment or other activities.

Transparency International Anti-Corruption Plain Language Guide July 2009

Law	Offences/Offending Behaviour	Enforcement (Beyond police)
There is no legislation in the UK that creates specific offences against embezzlement. However, theft, fraud, audit, and money laundering offences may all be applicable.		
Theft Act 1968	Under Section 1 of the Theft Act 1968 a person is guilty of the basic offence of theft if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.	NCA
Fraud Act 2006	<p>The Fraud Act 2006 creates three categories of fraud:</p> <ul style="list-style-type: none"> • fraud by false representation • fraud by failing to disclose information • fraud by abuse of position 	<p>NCA</p> <p>CoLP - National Fraud Intelligence Bureau</p> <p>National Police Service Lead for Economic Crime</p> <p>CoLP reporting hotline for fraud - Action Fraud</p>
Common law offence of cheating the public revenue	Dishonestly making false statements with intent to deceive or prejudice HMRC or the Department for Work and Pensions.	
Common law offence of conspiracy to defraud	"To defraud" or to act "fraudulently" is to dishonestly to prejudice or to take the risk of prejudicing another's right, knowing that you have no right to do so (Welham v. DPP [1961] A.C. 103, HL).	

Serious Crime Act 2007	Part 3 of the Serious Crime Act 2007 provides measures to prevent or disrupt serious and other crime. These include powers bestowed upon public authorities to disclose and share information to prevent fraud.	NCA CoLP - National Fraud Intelligence Bureau National Police Service Lead for Economic Crime CoLP reporting hotline for fraud - Action Fraud
National Audit Act 1983; Local Audit and Accountability Act 2014	Relevant bodies (primarily National Audit Office) are given powers under Schedule 9 of the 2014 Act to match data sets to prevent and detect fraud.	National Audit Office
Companies Act 1985	Offence of fraudulent trading: Section 993 Companies Act 1985. If any business is carried on with intent to defraud creditors, or for any other purpose, every person who is knowingly a party to the carrying on of the business in that manner commits an offence.	NCA CoLP - National Fraud Intelligence Bureau National Police Service Lead for Economic Crime CoLP reporting hotline for fraud - Action Fraud
Parliamentary Standards Act 2009 (as amended by the Constitutional Reform and Governance Act 2010)	Section 10 creates an offence of providing false or misleading information for allowances claims by members of the House of Commons.	Independent Parliamentary Standards Authority
Serious Crime Act 2015	Section 1 allows courts to make serious crime prevention orders (prohibitions, restrictions, requirements etc.) where the Courts: a) are satisfied that a person has been involved in serious crime; and b) have reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement of the person in serious crime. Part 2 of the Act replaces the offence of 'incitement' in England, Wales and Northern Ireland, with three new offences of: <ul style="list-style-type: none"> • Intentionally encouraging or assisting an offence • Encouraging or assisting an offence believing it will be committed • Encouraging or assisting offences believing one or more will be committed. 	NCA CoLP - National Fraud Intelligence Bureau National Police Service Lead for Economic Crime CoLP reporting hotline for fraud - Action Fraud

Overview

Embezzlement is an act that is largely covered by the definitions of theft and fraud. There is no real need for a specific offence of embezzlement in the UK because the laws governing theft, fraud, audit and money laundering are able to address this behaviour.

Embezzlement is the appropriation of property without the consent of the owner, where the appropriation is by a person who has received limited ownership, with restoration at a future time, or possession of property with liability to the owner.⁴⁰ An example is asset misappropriation fraud, where people who are entrusted to manage the resources of an organisation steal from it by manipulating accounts or creating false invoices. Fraud is an act of deception for personal gain and is estimated to cost £50 billion each year.⁴¹ As set out in the UK Serious and Organised Crime Strategy October 2013, UK public sector employees are at a higher risk of becoming involved in fraud and corruption.⁴²

A parallel issue is that cases of bribery may often be prosecuted under fraud offences, if prosecutors believe that the conviction may be more achievable by doing so.

Key legislation

Together the offences in the Theft Act 1968 and Fraud Act 2006 address much of the conduct that makes up the act of “embezzlement”. Section 1 of the Theft Act 1968 provides the legal definition of theft. The Fraud Act 2006 was introduced to modernise and make the fraud law more straight forward. It applies in England, Wales and Northern Ireland and repealed a range of offences from the Theft Act 1968 and the Theft Act 1978.⁴³

Section 1 of the Fraud Act 2006 was designed to capture all forms of fraudulent activity committed by an individual and as such creates a general offence of fraud that can be committed in three different ways: fraud by false representation, fraud by failing to disclose information and fraud by abuse of position. For each case there must be dishonest conduct, with the intention to make a gain, which causes a loss or risk of loss to another, although no loss or gain needs to actually have been made. The maximum sentence upon conviction is 10 years imprisonment. Other offences include possession of articles for use in fraud, the offence of making or supplying articles for use in frauds and obtaining services dishonestly.

⁴⁰ <https://www.fraudadvisorypanel.org/wp-content/uploads/2015/04/Fraud-Facts-17B-Fraud-in-Scotland-Revised-March14.pdf> [Accessed 31 March 2016]

⁴¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/206552/nfa-annual-fraud-indicator-2013.pdf [Accessed 31 March 2016]

⁴² <https://www.gov.uk/government/publications/serious-organised-crime-strategy> [Accessed 31 March 2016]

⁴³ http://www.cps.gov.uk/legal/d_to_g/fraud_act/ [Accessed 31 March 2016]

Enforcement

Following the Serious and Organised Crime Strategy, it is the UK Government's stated intent that the NCA coordinates the work of multiple law enforcement authorities under its Economic Crime Command.

Within the UK Parliament, the IPSA reviews and investigates business costs and expenses incurred by an MP of its own initiative or following a request from another MP, a member of the public or from within the IPSA. The Compliance Officer may impose a repayment direction for inappropriately paid sums and a penalty (not exceeding £1,000) on a member of the House of Commons for failure to comply.

Other regulation and legislation

A range of legislation comprehensively protects from embezzlement and fraud in the UK, in addition to the common law offence of cheating the public revenue or conspiracy to defraud. The Audit Commission Act 1983, National Audit Act 1983, and Serious Crime Act 2007 also contribute to multiple offences across theft, fraud and false accounting.

The CPS's guidance to the Fraud Act 2006 lists other possible offences that may be applicable in cases of fraud, including Making Off Without Payment (section 3 Theft Act 1978), False Accounting (section 17 Theft Act 1968), offences under the Computer Misuse Act 1990, Forgery and Counterfeiting Act 1981, the Identity Cards Act 2006 or the Financial Services and Markets Act 2000. The Sentencing Council list legislation applicable for specific types of fraud.⁴⁴

There are various exemptions for each of the devolved regions with regard to the Serious Crime Act 2015:

Section 1 allows the High Court of Justice in England and Wales and the High Court in Northern Ireland to make serious crime prevention orders (prohibitions, restrictions, requirements etc.) where the Courts: a) are satisfied that a person has been involved in serious crime, whether in England, Wales, Northern Ireland or elsewhere; and b) have reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement of the person in serious crime. The burden of proof for these issues is on the person applying for the order.

Part 2 of the Act replaces the offence of 'incitement' in England, Wales and Northern Ireland, with three new offences of:

- Intentionally encouraging or assisting an offence
- Encouraging or assisting an offence believing it will be committed
- Encouraging or assisting offences believing one or more will be committed.

⁴⁴ https://www.sentencingcouncil.org.uk/wp-content/uploads/Fraud_bribery_and_money_laundering_offences_-_Definitive_guideline.pdf [Accessed 31 March 2016]

For UK Parliament, MPs are guilty of an offence if they make a claim under the MPs allowance scheme and provide information that they know to be false or misleading. If convicted the guilty person may receive a fine, an imprisonment term no more than 12 months or both.

The Sentencing Council lists legislation applicable for specific types of fraud.⁴⁵ For benefit fraud there are the Tax Credits Act 2002 and Social Security Administration Act 1992, and for Revenue fraud the Value Added Tax Act 1994, the Finance Act 2000 and the Customs and Excise Management Act 1979.

For UK Parliament, MPs are guilty of an offence if they make a claim under the MPs allowance scheme and provide information that they know to be false or misleading. If convicted the guilty person may receive a fine, an imprisonment term no more than 12 months, or both.

Scottish variations:

In Scotland criminal fraud is mainly dealt with under the common law. Uttering and embezzlement are also offences. The main examples of statutory fraud that supplement common law fraud are the Bankruptcy (Scotland) Act 1985, Companies Act 2006, Computer Misuse Act 1990, Criminal Justice and Licensing (Scotland) Act 2010 (articles for use in frauds), Financial Services and Markets Act 2000 (to protect investors), Food Safety Act 1990 (labelling and substandard food), Forgery and Counterfeiting Act 1982 (counterfeiting of bank notes and coins), Insolvency Act 1986, Trade Descriptions Act 1968 (false or misleading information given by a business) and Weights and Measures Act 1985.

As Scotland does not have a SFO, serious fraud cases are investigated by the Crown Office's Economic Crime Unit, which is part of the Serious Organised Crime Division. "The Scottish Crime and Drug Enforcement Agency (SCDEA) tackles serious organised crime (including fraud) in Scotland".¹ Unlike in the rest of the UK, conviction on indictment is up to life imprisonment, an unlimited fine or both.

¹ http://www.audit-scotland.gov.uk/docs/central/2010/fa_0910_scot_crime_drug_agency.pdf
[Accessed 16 March 2016]

⁴⁵ https://www.sentencingcouncil.org.uk/wp-content/uploads/Fraud_bribery_and_money_laundering_offences_-_Definitive_guideline.pdf [Accessed 31 March 2016]

3.6 Electoral Fraud

Definition

Deliberate wrong-doing in the electoral process, which is intended to distort the individual or collective will of the electorate –**UK Electoral Commission**⁴⁶

Law	Offences/Offending Behaviour	Enforcement (Beyond police)
Representation of the People Act 1983	<p>False registration information (Section 13D(1))</p> <p>False information in relation to postal/proxy voting (Section 13D(1A))</p> <p>Personation (Section 60)</p> <p>Voting whilst under a legal incapacity (Section 61(1))</p> <p>Multiple voting (Section 61(2)(a d))</p> <p>Offences relating to the applications to register to vote by post and proxy (Section 62A)</p> <p>Breach of official duty (Section 63(1))</p> <p>Tampering with nomination papers, ballot papers etc. (Section 65(1))</p> <p>False statements on nomination papers etc. (Section 65A(1))</p> <p>Requirement of secrecy (Section 66(1 5))</p> <p>Prohibition on publication of exit polls (Section 66A(1))</p> <p>Imitation poll cards (Section 94(1))</p> <p>Disturbances at election meetings (Section 97(1))</p> <p>Officials not to act for candidates (Section 99(1))</p> <p>Illegal canvassing by police officers (Section 100(1))</p> <p>False statement of fact as to candidate (Section 106(1))</p> <p>Corrupt withdrawal from candidature (Section 107)</p> <p>Payments for exhibition of election notices (Section 109)</p> <p>Prohibition of paid canvassers (Section 111)</p> <p>Providing money for illegal purposes (Section 112)</p> <p>Bribery (Section 113)</p> <p>Treating (Section 114)</p> <p>Undue influence (Section 115)</p>	<p>Local Electoral Registration Officers (EROs) and Returning Officers (ROs) provide management of the process and are obliged to identify risk of electoral fraud.</p> <p>The police are responsible for investigating any allegations of electoral fraud.</p> <p>Every police force in the UK has an identified Single Point of Contact Officer (or SPOC) for electoral fraud, who provides specialist support and advice to investigators.</p>
Electoral Administration Act 2006	<p>This created two relevant offences:</p> <ul style="list-style-type: none"> supplying false information to an Electoral Registration Officer (Section 15) the fraudulent application of a postal vote (Section 40) 	

⁴⁶ <http://www.electoralcommission.org.uk/find-information-by-subject/electoral-fraud/electoral-fraud-vulnerabilities-review?a=155335> [Accessed 21 April 2016]

Overview

In 2015 The Electoral Commission listed 1,280 reports to the police of electoral fraud and 14 significant cases of electoral fraud resulting in custodial sentences between 2008 and 2013.⁴⁷ In their January 2014 report, the Electoral Commission identified 16 local authority areas where there appears to be a greater risk of allegations of electoral fraud being reported.⁴⁸ They are characterised by being densely populated, with communities with a diverse range of nationalities and ethnic backgrounds.

Key legislation

The Representation of the People Act 1983 (RPA) forms the basis of electoral fraud offences related to corruption in local and parliamentary elections.⁴⁹ Part I Sections 60 to 66B details most offences applicable to voters, officials and electors. Part I Section 100 details the illegality of police officers canvassing and Part II Section 106 makes it an offence to provide false statements as to candidates. Prosecutions under the RPA must be brought within 12 months of the offence being committed, though this may be extended to no more than 24 months in exceptional circumstances. Section 115 details the offence of Undue Influence.

Enforcement

Local Electoral Registration Officers (EROs) and Returning Officers (ROs) manage elections and should have plans to identify any fraud. The UK prosecuting authorities i.e. the CPS are then responsible for taking cases to court.⁵⁰

Every police force in the UK has an identified Single Point of Contact Officer (or SPOC) for electoral fraud, these officers provide specialist support and advice to investigators.

One of the most significant enforcement actions of recent times has been the removal of Lutfur Rahman from the office of mayor of Tower Hamlets after he breached the 1983 Representation of the People Act. He was also ordered to pay £250,000 in costs after the Election Commissioner upheld a number of the allegations, including:

- Voting fraud, with ballots being double-cast or cast from false addresses.
- False statements being made against Mr Rahman's rival Mr Biggs.
- Bribery, with large amounts of money were given to organisations who were "totally ineligible or who failed to meet the threshold for eligibility".
- Treating, in the form of providing free food and drink to encourage people to vote for Mr Rahman.
- Spiritual influence, as voters were told that it was their duty as Muslims to vote for Mr Rahman. The high court judge, Mr Mawrey cited a letter signed by 101 Imams in Bengali stating it was people's "religious duty" to vote.⁵¹

⁴⁷ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0007/181267/Electoral-fraud-research-briefing-January-2015.pdf [Accessed 16 March 2016] Note that it does not include the high-profile case in 2004 regarding Birmingham City Council elections as there was no prosecution.

⁴⁸ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/164609/Electoral-fraud-review-final-report.pdf [Accessed 16 March 2016]

⁴⁹ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/155335/Electoral-fraud-evidence-and-issues-paper-revised.pdf [Accessed 16 March 2016]

⁵⁰ <http://www.electoralcommission.org.uk/find-information-by-subject/electoral-fraud/electoral-fraud-responsibilities> [Accessed 16 March 2016]

⁵¹ <http://www.bbc.co.uk/news/uk-england-london-32428648> [Accessed 31 March 2016]

Other regulation and legislation

The Electoral Commission provides a Code of Conduct for campaigners, highlighting unsuitable practices outside polling stations and the channels to declare allegations of electoral fraud⁵².

The Electoral Administration Act 2006 was introduced to improve the security of people voting⁵³. Specifically it created two new offences, supplying false information to an Electoral Registration Officer and the fraudulent application of a postal vote.

Variations in practice

Electoral Bribery - A person is guilty of bribery if they directly or indirectly give any money or procure any office to or for any voter, in order to induce any voter to vote, or not vote, for a particular candidate or option; or to vote or refrain from voting.

Treating - A person is guilty of treating if either before, during or after an election they directly or indirectly give or provide (or pay wholly or in part the expense of giving or providing) any food, drink, entertainment or provision in order to influence any voter to vote or refrain from voting. The lengthier extracts from RPA on this Section 114 offence point out that treating requires a corrupt intent and does not apply to ordinary hospitality.

Undue influence - A person is guilty of undue influence if they directly or indirectly make use of or threaten to make use of force, violence or restraint, or inflict or threaten to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. Undue influence can include threats of harm of a spiritual nature.

Immunity, restrictions or limited coverage

There are a number of laws that relate to electoral fraud. The area is complex and in places outdated. Electoral treating – providing food and drink in exchange for votes – is viewed as archaic and possibly at odds with other legislation or norms of behaviour. In response to criticism of the legislation in this area, the Law Commission began a project to modernise, rationalise and simplify referendums under statute.

A report with recommendations to the UK Government was published in March 2015 which proposed that “electoral law should be centrally set out for all elections, with fundamental or constitutional matters contained in primary legislation, and detailed rules on the conduct of elections contained in secondary legislation.” It also made two provisional proposals concerning:

- i. the rationalisation of electoral laws into a single and consistent framework,
- ii. maintaining within it the existing differences that are due to use of a particular voting system, or certain policies⁵⁴

Postal voting is seen by some as facilitating electoral fraud; a Deputy High Court Judge recently commented that postal voting is unviable in its current form, with fraud possible on an industrial scale.⁵⁵

⁵² http://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/179741/Code-of-conduct-for-campaigners-2015.pdf [Accessed 31 March 2016]

⁵³ http://www.cps.gov.uk/legal/d_to_g/election_offences/ [Accessed 31 March 2016]

⁵⁴ http://www.lawcom.gov.uk/wp-content/uploads/2015/03/cp218_electoral_law_summary.pdf [Accessed 31 March 2016]

⁵⁵ <http://www.bbc.co.uk/news/uk-politics-26520836> [Accessed 31 March 2016]

3.7 Abuse of function

Definition

The performance or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity

Article 19 UNCAC

Law	Offences/Offending Behaviour	Enforcement (Beyond police)
As an umbrella term for a wide range of corrupt behaviour, all other offences listed previously may be considered to constitute 'abuse of function' offences. The additional offences below may also apply to the corrupt behaviour.		
Common law offence of Misconduct in Public Office common law.	<p>An offence is committed when a public officer acting as such:</p> <ul style="list-style-type: none"> wilfully neglects to perform his duty and/or wilfully misconducts himself to such a degree as to amount to an abuse of the public's trust in the office holder without reasonable excuse or justification 	NCA
Fraud Act 2006	The offence of 'fraud by abuse of position' is committed by a person who occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person, and dishonestly abuses that position.	NCA; CoLP - National Fraud Intelligence Bureau; National Police Service Lead for Economic Crime; CoLP reporting hotline for fraud - Action Fraud; SFO
Representation of the People Act 1983	<p>Section 63(1) creates an offence for a breach of official duty for election officials.</p> <p>Officials are also not to act for candidates: Acting as a candidate's agent in the conduct or management of an election.</p> <p>Illegal canvassing by police officers: No member of the police force shall by word, message in writing or in any other manner endeavour to persuade any person to give or dissuade any person from giving their vote by proxy or as an elector at any Parliamentary election for a constituency or local government election for any electoral area wholly or partly within the police area.</p>	The police are responsible for investigating any allegations of electoral fraud. Every police force in the UK has an identified Single Point of Contact Officer (or SPOC) for electoral fraud, who provides specialist support and advice to investigators.

Local Audit and Accountability Act	Obstructing the exercise of a local auditor's right of access at all reasonable times to every document that relates to a relevant authority or an entity connected with a relevant authority, and the auditor thinks is necessary for the purposes of the auditor's functions.	None other than the police
The Freedom of Information Act 2000 (FOIA)	Section 77 creates the offence of altering records with intent to prevent disclosure.	Information Commissioners Office
Company Directors Disqualification Act 1986	For a Company Director, general 'unfit conduct' includes enabling the disqualification of Company directors.	The Insolvency Service; Companies House; the Competition and Markets Authority (CMA); the courts
Criminal Justice and Courts Act 2015 (If it involves a police person abusing their function)	Corrupt or other improper exercise of police powers and privileges. A police constable listed in subsection (3) commits an offence if he or she— (a) exercises the powers and privileges of a constable improperly, and (b) Knows or ought to know that the exercise is improper.	NCA CPS

Overview

'Abuse of function' can be considered an umbrella term for almost all other corrupt behaviour.

Key legislation

The 2013 Implementation Review Group UNCAC report noted that "...*The common law offence of misconduct in public office corresponds to the UNCAC offence of abuse of functions.*"⁵⁶ Misconduct in Public Office is defined by the CPS as "a public officer acting as such wilfully neglects to perform his duty and/or wilfully misconducts himself to such a degree as to amount to an abuse of the public's trust in the office holder without reasonable excuse or justification"⁵⁷

Misconduct in public office is an offence at common law triable only on indictment. It carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office.

When assessing the penalty or sentence the court will take into account the nature of the role they were performing, the duties carried out and the level of public trust involved.

⁵⁶Conference of the States Parties to the United Nations Convention against Corruption, *Implementation Review Group, Fourth Session*, (United Nations, 2013) pg.4

⁵⁷ <https://www.cps.gov.uk/legal/l-to-o/misconduct-in-public-office/#content> [Accessed 31 March 2016]

The CPS advises that use of the common law offence should be limited to the following situations:

- Where there is no relevant statutory offence, but the behaviour or the circumstances are such that they should nevertheless be treated as criminal.
- Where there is a statutory offence but it would be difficult or inappropriate to use it. This might arise because of evidential difficulties in proving the statutory offence in the particular circumstances.
- Because the maximum sentence for the statutory offence would be entirely insufficient for the seriousness of the misconduct.

Abuse of function is solely related to those who hold a public office or role, rather than being applicable to the general public. For this reason, it heavily relies upon codes of compliance to form its regulatory framework. These codes are the Civil Service and Ministers' Code of Compliance, the Departments and Agencies Code of Compliance, and the House of Commons and House of Lords Standards and Code of Compliance. These three codes outline the ways in which public officials of these specific institutions are expected to behave, and provides an objective standard against which the public officials can be judged. The abuse of function offence may often be considered a secondary offence, or an aggravating element of the primary offence. This is because offences regularly fall under the jurisdiction of another statutory offence which might be more likely to result in prosecution.

Other regulation and legislation

In addition, the Fraud Act 2006, Representation of the People Act 1983, Local Audit and Accountability Bill, The Freedom of Information Act 2000, and Company Directors Disqualification Act 1986 all created unique and distinct 'abuse of function' offences. The offence of police corruption in the 2015 Criminal Justice and Courts Act adds the specific offence of a police officer exercising their power improperly.

4. Measures for Detection and Deterrence

This section assesses the preventative measures within UK legislation which assist detecting and deterring corrupt behaviour. The measures are set out with an overview of how they can help with detecting and deterring corruption; the law enforcement bodies responsible for these measures and the gaps which currently exist in their use.

- anti-money laundering and asset recovery
- whistleblowing
- visa denial
- transparency measures
- proactive investigation and intelligence gathering

4.1 Anti-Money Laundering and Asset Recovery

Definition

Money laundering: The process of concealing the origin, ownership or destination of illegally or dishonestly obtained money by hiding it within legitimate economic activities.

[Transparency International Anti-Corruption Plain Language Guide July 2009](#)

Illicit enrichment: Refers to the significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

[Article 20 UNCAC](#)

Law	Detection/Deterrent	Enforcement (Beyond police)
There is currently no legislation in the UK that creates specific offences against embezzlement or illicit enrichment. However, theft, fraud, audit, and money laundering offences may all be applicable against this range of corrupt behaviours.		
POCA	<p>Covers a range of offences including money laundering (Part 7) and provides for the confiscation and civil recovery of proceeds from crime.</p> <p>The Act also creates an offence of failing to report a suspicion of money laundering by another person (Sections 330 and 331)</p>	<p>NCA</p> <p>SFO</p> <p>CoLP - National Fraud Intelligence Bureau</p> <p>National Police Service Lead for Economic Crime</p> <p>CoLP reporting hotline for fraud - Action Fraud</p> <p>CPS</p>

Serious Crime Act 2007	Part 3 of the Serious Crime Act 2007 provides measures to prevent or disrupt serious and other crime. These include powers bestowed upon public authorities to disclose and share information to prevent fraud.	NCA CoLP - National Fraud Intelligence Bureau National Police Service Lead for Economic Crime CoLP reporting hotline for fraud - Action Fraud
Money Laundering Regulations (MLRs) 2007	Criminal sanctions are applied if a regulated sector firm fails to comply with the obligations set out in the regulations. The sanction can include a fine and/or up to two years imprisonment for directors and senior managers	The Treasury appoints competent authorities for the purposes of supervising AML. Currently there are 27 bodies including HMRC and the FCA (see below)
Crime and Courts Act 2013	Section 7 of the Crime and Courts Act gives banks and other organisations the legal right to disclose otherwise confidential information to the NCA to help it carry out its tasks.	NCA
Serious Crime Act 2015	Under Section 45 any person who participates in the criminal activities of an "organised crime group" commits an offence and is liable to up to five years' imprisonment. Section 37 of the Act adds a new subsection 338(4A) to POCA, providing that: "where an authorised disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by or on whose behalf it was made". The Act also makes other amendments to the POCA.	NCA CPS SFO
The Small Business, Enterprise and Employment Act 2015	It will be a requirement for a company to take reasonable steps to identify people they know or suspect to hold significant influence or control. If they fail to do so they risk being convicted of a criminal offence.	NCA UKFIU CoLP - National Fraud Intelligence Bureau

	The Act also brings about the establishment of a central public registry of those individuals who hold significant control of UK companies.	National Police Service Lead for Economic Crime CoLP reporting hotline for fraud - Action Fraud
The Companies Act 2006 (Amendment of Part 18) Regulations 2015 No. 532	<p>According to the law, every company must maintain a "Register of Members", to be kept at the firm's registered office, that records the names and addresses of the shareholders of an incorporated or registered firm and the number and class of shares held by each shareholder.</p> <p>Under the amendments, companies and legal entities will also be required to maintain information that goes beyond legal ownership, to also include voting rights.</p>	NCA SFO

Overview

Any handling or involvement with any proceeds of any crime (or monies or assets representing the proceeds of crime) can be a money laundering offence. An offender's possession of the proceeds of his own crime falls within the UK definition of money laundering. Any act of corruption will therefore almost certainly involve attempted money laundering, whether it is UK-based corruption as the original (or predicate) offence, or whether it is a foreign public official laundering the proceed of corruption into the UK.

The UK Anti-Money Laundering framework is well developed in law, but substantial questions remain about its effectiveness in dealing with the proceeds of corruption. There is currently no legislation in the UK that creates specific offence against illicit enrichment; however, the UK Government announced in April 2016 that it will consult on introducing one as part of its action plan for anti-money laundering and counter-terrorist finance.⁵⁸

Key legislation

Key amongst money laundering legislation is the POCA, as amended, which contains the UK's money laundering offences, tipping off offences (informing an individual that law enforcement authorities are investigating them for money laundering), and asset recovery legislation, and provides the legal architecture for the Suspicious Activity Reports (SARS) regime; and Money Laundering Regulations 2007. The POCA brought together the previous confiscation regimes (which had been piecemeal) into one act, whilst also introducing some new powers. POCA has since been amended by a number of other pieces of legislation since 2002.

⁵⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundering_web_.pdf [Accessed April 2016]

The POCA contains three principal money laundering offences:

- Section 327: An offence is committed if a person conceals, disguises, converts, transfers or removes from the jurisdiction property which is, or represents, the proceeds of crime which the person knows or suspects represents the proceeds of crime.
- Section 328: An offence is committed when a person enters into or becomes concerned in an arrangement which he knows or suspects will facilitate another person to acquire, retain, use or control criminal property and the person knows or suspects that the property is criminal property.
- Section 329: An offence is committed when a person acquires, uses or has possession of property which he knows or suspects represents the proceeds of crime.

In addition, Sections 330 and 331 create an obligation on those persons in the regulated sectors⁵⁹ to report their suspicion or knowledge of another person's money laundering to the NCA. Failure to report is a criminal offence.

Part 2 of POCA contains provision to make confiscation orders, which are imposed post-conviction, and Part 5 contains powers for civil recovery (or non-conviction based asset recovery), which are used to recover property which is, or which represents property obtained through unlawful conduct. Civil recovery is a powerful (albeit underused) method for law enforcement to target the proceeds of crime as opposed to the corrupt actor. With civil recovery there is no requirement to link the proceeds of crime with any specific act, rather an 'irresistible inference' must be made that the proceeds are criminal.⁶⁰

The UK money laundering regulations oblige financial institutions, regulatory authorities, and some non-financial businesses and professions (such as lawyers, accountants, estate agents, fine art dealers, dealers in precious metals and stones, and trust and company service providers) to file SARs with law enforcement Financial Intelligence Units (FIUs). The 2012 amendments to the 2007 regulations widened to include estate agents that deal solely with property overseas.⁶¹ Regulations require particular vigilance concerning PEPs – senior government officials, their family members, and close associates. Effective and intelligent SARs submitted to FIUs are critical in tracing corrupt assets and triggering criminal investigations. The majority of SARs are submitted by banks. Conversely, there is low detection and reporting by some of the 'gatekeeper' sectors such as lawyers and estate agents. Criminal sanctions apply to those businesses (including senior managers and directors) that breach the obligations in the Regulations.

MLRs include obligations on regulated sectors to establish effective systems for:

- assessing the risk of the business being used by criminals to launder money
- checking the identity of the business' customers
- checking the identity of 'beneficial owners' of corporate bodies and partnerships
- monitoring customers' business activities and reporting anything suspicious to the NCA
- making sure the business has the necessary management control systems in place

There are additional obligations consisting of:

- keeping all documents that relate to financial transactions, the identity of the business' customers, risk assessment and management procedures and processes
- making sure that the business' employees are aware of the regulations and have had the necessary training

⁵⁹ Financial services, accountancy, legal services, high-value dealers (luxury goods bought with cash), estate agents, trust and company service providers, and art and auction houses.

⁶⁰ Arising from case law - R v Anwoir [2008] <http://court-appeal.vlex.co.uk/vid/-52549352> [Accessed 4 April 2016]

⁶¹ <http://www.legislation.gov.uk/uksi/2012/2298/contents/made> [Accessed 31 March 2016]

The principal money laundering offences contained in Part 7 of POCA carry a maximum penalty of 14 years imprisonment and apply throughout the UK. The offence of failing to report a suspicion of money laundering by another person carries a maximum penalty of five years imprisonment and/or a fine.

The Serious Crime Act 2015 (Section 45) provides that any person who participates in the criminal activities of an "organised crime group" commits an offence and is liable to up to five years' imprisonment. An "organised crime group" is a group that has as its purpose (or one of its purposes) the carrying on of criminal activities and consists of three or more people who act, or agree to act, together to further that purpose.

Under the offence, a person is deemed to participate in the group's criminal activities if they take part in any activities that they know or reasonably suspects are criminal activities of an organised crime group or will help such a group to carry on criminal activities. "Criminal activities" are activities that are carried on with a view to obtaining (directly or indirectly) any gain or benefit (although this is not limited to a financial benefit) and are either:

- carried on in England and Wales and constitute an offence punishable on conviction with imprisonment of seven years or more; or
- carried on outside England and Wales, constitute an offence under the law of the country where they are carried on and would constitute an offence punishable of imprisonment of seven years or more if carried on in England and Wales.

As long as one act/omission comprising participation in the group's criminal activities takes place within England and Wales, it is not necessary for all such acts to take place within the jurisdiction. This offence is subject to a defence that the person's participation was necessary for a purpose related to the prevention or detection of crime.

Further, the Serious Crime Act 2015 strengthens the operation of the asset recovery process by amending POCA with the effect of:

- increasing prison sentences for failure to pay confiscation orders;
- ensuring that criminal assets cannot be hidden with spouses, associates or other third parties;
- requiring courts to consider imposing an overseas travel ban for the purpose of ensuring that a confiscation order is effective;
- enabling assets to be restrained more quickly and earlier in investigations;
- reducing the defendant's time to pay confiscation orders; and
- extending investigative powers so that they are available to trace assets once a confiscation order is made

Section 37 of the Act adds a new subsection 338(4A) to POCA, providing that: "where an authorised disclosure is made in good faith, no civil liability arises in respect of the disclosure on the part of the person by or on whose behalf it was made". This came into force on 1 June 2015. Section 37 enshrines the principle established in case law that a person reporting suspicions of money laundering and declining or delaying compliance with customer instructions shall be protected from civil liability towards that customer.

Establishing beneficial ownership

As part of the prevention strategy for corruption it is necessary for the UK to have legislation which prevents those based in the UK from using secretive legal structures to conceal corruption. In 2014 David Cameron signed the G20's principles of beneficial ownership. The UK is now compliant with four of the ten principles and has made progress in reaching full compliance with the rest.

The 2007 Money Laundering Regulations give a definition of beneficial owner as any individual who—

- as respects any body corporate other than a company whose securities are listed on a regulated market, ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) more than 25 per cent of the shares or voting rights in the body; or
- as respects any body corporate, otherwise exercises control over the management of the body

In addition to this the Small Business, Enterprise and Employment Act 2015 introduces the concept of a person who holds 'significant control' of a company.

From January 2016, companies have been legally required to keep a register of people with significant control (PSC). From April 2016, they must file information about so-called PSCs at Companies House in their annual return. BIS has created draft guidance for companies on how to record beneficial ownership.⁶² This register will be made public in June 2016.⁶³

As well as having legislation which requires UK companies to disclose beneficial ownership, the UK also requires UK companies to take reasonable steps to identify people they know or suspect to hold significant influence or control under the Small Business, Enterprise and Employment Act 2015.

Loopholes still exist in the UK's beneficial ownership legislation. For example, the UK domestic trust law creates a money laundering risk due to unclear legal ownership and beneficiary structures. The law in the UK does not specify which competent authorities should have timely access to beneficial ownership information trusts.⁶⁴

In theory by the end of 2016 the UK should be well-covered in terms of legislation requiring companies to disclose beneficial ownership and conduct due diligence on the beneficial owners of those they do business with. The enforcement situation is unclear as it will require extra resources and manpower to ensure implementation of the regulation.

Enforcement

For these types of corrupt behaviour, following the Serious and Organised Crime Strategy, it is the UK Government's stated intent that the NCA coordinates the work of multiple law enforcement authorities under its Economic Crime Command.

The FCA regulates the conduct (including supervising AML) of the financial services industry in the UK, whilst the Prudential Regulation Authority is concerned with supervising and regulating capital, liquidity and resolution mainly in the banks.

⁶² <https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships> [Accessed 21 April 2016]

⁶³ <http://www.step.org/company-beneficial-ownership-register-open-april-2016> [Accessed 31 March 2016]

⁶⁴ http://www.transparency.org/files/content/publication/2015_BOCountryReport_United_Kingdom.pdf [Accessed 11 April 2016]

The FCA is a competent authority to bring civil and criminal sanctions under the Money Laundering Regulations 2007, as well as enforcing (criminally and civilly) against breaches of its Handbook of Rules.⁶⁵ It has powers to prosecute a number of specific offences relating to regulated activities, such as Market Abuse. The maximum custodial sentence for money laundering offences is 14 years according to the sentencing guidelines.⁶⁶

The FCA also has powers to impose fines upon firms that fail to comply with the Regulations. In 2014 it issued Standard Bank PLC with a £7,640,400 fine for failings relating to anti-money laundering policies and procedures for corporate customers connected to politically exposed persons.⁶⁷ Under the 2012 amendments to money-laundering regulations the FCA was also given powers to impose restrictions on taking on new clients for a certain period for institutions found not to be following regulation. These sanctions were imposed on the Bank of Beirut which was banned from acquiring new customers under its regulated activities for 126 days.⁶⁸

Within its rules firms have the obligation that firms reduce the extent to which they facilitate financial crime, including bribery and corruption. To this end the FCA will carry out thematic reviews to assess bribery and corruption risk, and have regularly enforced against regulated firms for having weak preventative systems and controls.⁶⁹

There are 27 different supervisory bodies or supervisors charged with overseeing the UK's AML regime and ensuring high levels of awareness and compliance amongst firms within the regulated sectors.⁷⁰ Each sector has at least one regulator to oversee it and ensure that the firms within each sector comply with the above points, although occasionally the regulators can have some overlap in their areas. To assist supervisors and firms to comply with the MLRs, HM Treasury have approved the guidance produced by the Joint Money Laundering Steering Group. HMRC is the default regulator for any sector that does not have a specific authority.

These regulators monitor firms that are covered by the MLRs, assessing them on the implementation of controls which cover the following:

- assessing the risk of the business being used by criminals to launder money
- checking the identity of the business' customers
- checking the identity of 'beneficial owners' of corporate bodies and partnerships
- monitoring customers' business activities and reporting anything suspicious to the NCA
- making sure the business has the necessary management control systems in place
- keeping all documents that relate to financial transactions, the identity of the business' customers, risk assessment and management procedures and processes
- making sure that the business' employees are aware of the regulations and have had the necessary training

The UK's policy on anti-money laundering is dictated by three principal objectives: to deter; to detect; and to disrupt, with enforcement as a last resort. Supervision and enforcement of the regulation, primarily by the FCA is proving effective in countering corruption.

⁶⁵ <https://www.handbook.fca.org.uk/> [Accessed 25 April 2016]

⁶⁶ https://www.sentencingcouncil.org.uk/wp-content/uploads/Fraud_bribery_and_money_laundering_offences_-_Definitive_guideline.pdf [Accessed 31 March 2016]

⁶⁷ <https://www.fca.org.uk/firms/being-regulated/enforcement/fines/2014> [Accessed 31 March 2016]

⁶⁸ <https://www.fca.org.uk/static/documents/final-notice/bank-of-beirut.pdf> [Accessed 31 March 2016]

⁶⁹ For example against Besso Limited and JLTS Limited

⁷⁰ For more information see TI-UK's *Don't Look, Won't Find: Weaknesses In The Supervision Of The UK's Anti-Money Laundering Rules* <http://www.transparency.org.uk/publications/dont-look-wont-find-weaknesses-in-the-supervision-of-the-uks-anti-money-laundering-rules/> [Accessed 31 March 2016]

The regulators oversee the internal controls of companies under their jurisdiction to ensure that they comply with the law. If the regulators find that companies do not have satisfactory standards of compliance, they can then fine the company and offer assistance in improving the state of compliance within the company. Fines can be levied against the owners of companies (in all legal senses), but if the breach of regulations can be proven to have been committed with the consent or connivance of their owners, or is attributable to their neglect, criminal prosecutions may also be brought against them, another officer of the body corporate (a director, for example), an officer of an unincorporated association, or a partner in partnership with the firm.

In addition to the regulations, the Treasury approves AML/CFT guidance written by and for industry sectors. Treasury approved guidance exists for most supervised sectors and provides detailed assistance to firms on the practical application of legal and regulatory requirements to their business or sector.⁷¹

In terms of the new 'participation' offence established under the Serious Crime Act, the UK Government's Impact Assessment in relation to the offence, published in June 2014, suggested that discussions with the police and the CPS indicated that there could be an additional 100-200 prosecutions per year for this offence. The participation offence came into force on 3 May 2015.

Other regulation and legislation

Additionally, Article 45 of the Public Procurement Directive (2004/18/EC) provides that any candidate who has been the subject of a conviction for a corruption offence by final judgement will be excluded from participation in a public contract, provided that the contracting authority is aware of the conviction and decides that it is not in the general interest to allow that person to participate. Regulation 23 of the Public Contracts Regulations 2006 implements Article 45 in England, with the Public Procurement (Miscellaneous Amendments) Regulations 2011 amending "the Public Contracts Regulations to include reference to any offence under Section 1 or Section 6 of the Bribery Act 2010 as mandatory disqualification criteria". Due to concerns raised about a conviction under Section 7 of the Bribery Act leading to permanent debarment from public procurement, in March 2011 the Secretary of State for Justice confirmed that the corporate offence would only attract a discretionary rather than mandatory debarment.⁷² The Crime and Courts Act of 2013 which lead to the formation of the NCA has also developed the intelligence gathering and sharing capacity of law enforcement.

In particular, Section 7 gives the banks and other organisations the legal right to disclose otherwise confidential information to the NCA to help it carry out its tasks. The SFO has powers to require a person to provide information for the purpose of an investigation under Section 2 of the Criminal Justice Act 1987 (CJA). This information can take the form of documents or an interview; failure to comply without a reasonable excuse is a criminal offence. The issuing of a Section 2 notice also allows for the disclosure of information that would otherwise be considered confidential, thereby giving protection to the recipient from an action for breach of confidence. Section 2 notices are limited in the sense that they do not override legal professional privilege.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200701/aml_hmt_approved_guidance.pdf [Accessed 31 March 2016]

⁷² [http://www.qebholliswhiteman.co.uk/articles-pdfs/debarment-from-public-contracts-and-the-bribery-act-2010-\(3\).pdf](http://www.qebholliswhiteman.co.uk/articles-pdfs/debarment-from-public-contracts-and-the-bribery-act-2010-(3).pdf) [Accessed 31 March 2016]

These powers, particularly those held by the NCA have led to the formation of the Joint Money Laundering Intelligence Taskforce (JMLIT); a 12-month pilot project developed by the Home Office, NCA, CoLP, British Bankers' Association (BBA) and other financial institutions. Starting from February 2015 its aim was to improve intelligence sharing arrangements to aid the fight against money laundering and build upon the national leadership against organised economic and financial crime provided by the Economic Crime Command in the NCA. The UK Government's AML action plan proposes to move JMLIT to a permanent footing.⁷³

Limited coverage

Major gaps have been identified in the implementation of the UK's money laundering legislation.⁷⁴

The Financial Service Authority's 2011 thematic review of banks' management of high money laundering risk situations revealed systemic failings in AML compliance by financial institutions with high risk customers and PEPs. The report found that three quarters of the banks reviewed, including a number of major banks, were not managing AML risks effectively. Over half the banks failed to apply meaningful enhanced due diligence (EDD) measures in higher risk situations and more than a third of the banks visited failed to put effective measures in place to identify customers as PEPs. Around a third of the banks dismissed serious allegations about their customers without adequate review. The FCA's June 2013 and July 2014 Anti-Money Laundering Report restated the failure of banks to prevent the proceeds of corruption filtering through their systems.

In 2015 the UK Government published its Anti-Money Laundering National Risk Assessment (NRA), which reaffirmed its view that the UK legal and accountancy sectors are considered 'high risk' from a money laundering point of view. As well as this it highlighted intelligence deficiencies on the part of law enforcement on the role of the financial and professional services sectors (for example, banking, legal, accountancy and trust and company service providers) in money laundering.⁷⁵ The NRA also raised the issue that the supervisory regime is inconsistent, with noticeable variance within the risk-based approach of financial institutions.⁷⁶ Banks were found to have overlooked major risk areas such as trade-based money laundering.

It notes that there is a risk that professional body supervision is compromised by conflicts of interests as these bodies represent and are funded by the firms they supervise. 15 of the 22 money laundering supervisors operating within the highest risk sectors have serious conflicts of interest between their private sector lobbying roles and their enforcement responsibilities.⁷⁷

In the UK there is currently no illicit enrichment offence to criminalise suspicious or unexplained wealth, far in excess of what income and assets a public official has declared. Therefore, SARs sent to law enforcement relating to large transactions far in excess of a public official's declared earnings are not treated differently than those of private citizens. This could change with the potential introduction of Unexplained Wealth Orders (UWOs) which would require PEPs to explain the source of their assets.⁷⁸

⁷³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundering_web_.pdf [Accessed 21 April 2016]

⁷⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf [Accessed 31 March 2016]

⁷⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf [Accessed 31 March 2016]

⁷⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf [Accessed 31 March 2016]

⁷⁷ <http://www.transparency.org.uk/publications/dont-look-wont-find-weaknesses-in-the-supervision-of-the-uks-anti-money-laundering-rules/> [Accessed 13 April 2016]

⁷⁸ <http://www.telegraph.co.uk/news/politics/11814901/Suspiciously-rich-could-be-ordered-to-surrender-their-wealth-Sir-Eric-Pickles-says.html> [Accessed 31 March 2016]

The UK's present regime gives the NCA seven days within which to refuse its consent to a suspicious financial transaction. If it refuses its consent, the NCA has a period of 31 days to obtain a court order to freeze the account. The period is seen as an insufficient amount of time to investigate complex corruption cases with international dimensions. An illicit enrichment offence would provide a power to law enforcement to require the public official to explain sources of wealth for suspicious transactions. The UK Government announced in April 2016 that it would consult on introducing UWOs and an illicit enrichment offence as part of its AML action plan.⁷⁹

In addition to this the UK also lacks a law making failure to prevent economic crime a criminal offence. There is a law in place like this corresponding to bribery brought in by Section 7 of the 2010 UK Bribery Act and there were plans to bring in Corporate Criminal Liability as part of the 2014 UK Anti-Corruption Plan however this has not yet come to fruition.

Variations in practice

Wire and electronic funds transfers - These refer to a method through which banks transfer control of money by sending notification to another institution electronically. Such transfers remain a primary tool at all stages of the laundering process, but particularly in layering operations. They are particularly used in layering transactions, whereby funds are transferred through several different banks in several jurisdictions in order to blur the trail to the source of the funds.

Legitimate business ownership - Corrupt money can be added to the cash revenues of a legitimate business enterprise, particularly those that are already cash intensive, such as restaurants, bars, and convenience stores. The extra money is simply added to the till. The cost for this laundering method is the tax paid on the income. With companies whose transactions are better documented, invoices can be manipulated to simulate legitimacy. A used car dealership, for example, may offer a customer a discount for paying cash, then report the original sale price on the invoice, thus "explaining" the existence of the extra illicit cash. A slightly more sophisticated scheme may allow a criminal to profit twice in setting up a publicly traded front company with a legitimate commercial purpose—first from the laundered funds commingled with those generated by the business, and second by selling shares in this company to unwitting investors.

Use of "shell" corporations - These exist on paper but transact either no business or minimal business. A related concept, used mostly in the United States, is the special purpose vehicle. These are set up usually offshore, complete with bank accounts in which money can reside during the layering phase. The shell corporation has many potential uses. One example is to buy real estate or other assets, then sell them for a nominal sum to one's own shell corporation, which can then pass the assets on to an innocent third party for the original purchase price.

Real estate transactions - These can cloak illicit sources of funds or serve as legitimate front businesses, particularly if they are cash intensive. Properties may be bought and sold under false names or by shell corporations and can readily serve as collateral in further layering transactions.

⁷⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundering_web_.pdf [Accessed 21 April 2016]

Purchase of goods - This practice can be particularly attractive for laundering, especially certain items. Gold is popular because it is a universally accepted store of value, provides anonymity, is easily changed in form and holds possibilities of double invoicing, false shipments and other fraudulent practices. Fine art and other valuable items such as rare stamps are attractive for laundering purposes because false certificates of sale can be produced or phony reproductions of masterpieces can be purchased. Moreover, the objects are easily moved internationally or resold at market value to integrate the funds.

Currency exchange bureaus - These are not as heavily regulated as banks, and de facto, at least, may not be regulated at all, so they are sometimes used for laundering. Substantial foreign exchange transactions are said to be shifting from banks to these small enterprises.

4.2 Whistleblowing

Law	Detection/Deterrent	Enforcement (Beyond police)
Public Interest Disclosure Act 1998 (PIDA)	<p>An Act to protect workers who make certain disclosures of information in the public interest; to allow such individuals to bring action in respect of victimisation; and for connected purposes.</p> <p>Section 1 provides broad protection for workers and the circumstances which constitute the public interest (s.1 ss. 43E to 43H)</p>	<p>NCA</p> <p>SFO</p> <p>CoLP - National Fraud Intelligence Bureau</p> <p>National Police Service Lead for Economic Crime</p> <p>CoLP Reporting Hotline for Fraud - Action Fraud</p> <p>CPS</p>
2015 Small Business, Enterprise and Employment Bill	<p>Part 11, Sections 148 and 149</p> <p>Provide the Secretary of State with a power to require certain prescribed persons to report annually on the whistleblowing disclosures they receive.</p> <p>Maintain the confidentiality obligations of prescribed persons.</p> <p>Provide the Secretary of State with a power to make regulations to prohibit defined NHS employers from discriminating against applicants for employment who have previously made protected disclosures (within the meaning given by Section 43A of the Employment Rights Act 1996).</p>	<p>NCA</p> <p>CoLP - National Fraud Intelligence Bureau</p> <p>National Police Service Lead for Economic Crime</p> <p>CoLP Reporting Hotline for Fraud - Action Fraud</p>
Enterprise and Regulatory Reform Act 2013 (ERRA)	<p>Introduces a 'public interest test' to complement PIDA legislation. Also changes the 'good faith' test provided for by PIDA. ERRA also extends whistleblowing protection to workers who have been bullied and harassed by co-workers as a result of making a protected disclosure.</p>	<p>NCA</p> <p>CoLP - National Fraud Intelligence Bureau</p> <p>National Police Service Lead for Economic Crime</p> <p>CoLP Reporting Hotline for Fraud - Action Fraud</p>

Overview

Whistleblowing is commonly seen as an important anti-corruption measure. Workers involved in activities with public officials who abuse their office could be one of the most effective ways of detecting this kind of corruption, as this kind of activity can regularly be hidden effectively by the officials. In a study conducted by TI-UK and Tackling Corruption through Open Data (TACOD), 95 case studies of corrupt conduct were analysed, including the disclosure mechanism used.⁸⁰ Whistleblowing has repeatedly proved to be a prominent mechanism for detection with 15 per cent of bribery cases and 25 per cent of corrupt insider fraud being brought to light by whistleblowing.⁸¹

Key Legislation

The Public Interest Disclosure Act 1998 (PIDA) protects whistleblowers from victimisation by employers and co-workers. Under the law, a whistleblower may claim compensation for dismissal or detriment suffered as a result of blowing the whistle.

Since PIDA's implementation in 1998, many companies have created internal whistleblowing systems. However, despite this increase, PIDA also does not set out the basis for statutory whistleblowing policies, and has been criticised for not making the creation of such systems compulsory.⁸² PIDA also fails to prevent the 'blacklisting' of former whistleblowers, whereby an employer withholds privileges to a whistleblower that would normally be available to them, and also failing to protect those whistleblowers whose accusations are proved to be false from libel proceedings.⁸³ Rather it focuses on the protection of whistleblowers from harm arising from their actions.

In 1999-2000, the first year that PIDA was in force, there were 157 applications under the Act. In 2013-2014, there were 2,212. These numbers peaked in recent years, reaching 2,744 in 2012-2013. However the 2012 Public Concern at Work (PCaW) report estimates that only 26 per cent of cases of concerns raised are resolved, with 37 per cent ignored completely.⁸⁴

The **Public Interest Disclosure Act 1998** applies in full to England, Wales and Scotland, but only Section 17 is in force in Northern Ireland. As a devolved jurisdiction, Northern Ireland has a distinct statutory instrument, the Public Information Disclosure (Northern Ireland) Order 1998. This reflects the rest of the Act and was made only for purposes corresponding to the PIDA 1998.

The UK Government consulted on the whistleblowing framework in 2013, seeking evidence as to "whether the whistleblowing framework is operating effectively in today's labour market". This resulted in the whistleblowing framework being revisited in the 2015 Small Business, Enterprise and Employment Bill. The main outcome of this was that certain prescribed persons are to report annually on public interest disclosures (whistleblowing disclosures) that they receive. It is relevant to those bodies listed in the Public Interest Disclosure (Prescribed Persons) Order 1999. The 2015 Small Business, Enterprise and Employment Bill also applies to those

⁸⁰ <http://www.transparency.org.uk/publications/how-open-data-can-help-tackle-corruption-policy-paper/> p.6 [Accessed 18 April 2016]

⁸¹ <http://www.transparency.org.uk/publications/how-open-data-can-help-tackle-corruption-policy-paper/> p.6 [Accessed 18 April 2016]

⁸² <http://www.pcaw.org.uk/files/WBC%20Report%20Final.pdf> p.10 [Accessed 31 March 2016]

⁸³ <http://www.pcaw.org.uk/files/WBC%20Report%20Final.pdf> p.18 [Accessed 31 March 2016]

⁸⁴ <http://www.pcaw.org.uk/files/The%20Whistleblowing%20Report%20FINAL.pdf> [Accessed 31 March 2016]

organisations that take an interest in whistleblowing legislation, which was introduced by the Public Interest Disclosure Act 1998 and is contained in the Employment Rights Act 1996.

In addition to key legislation the UK Government introduced a witness charter in December 2013. Whilst not legally binding it sets out the standards of care that a witness to a crime or incident in England and Wales can expect. The Charter applies to all witnesses of a crime and to character witnesses but not expert witnesses.

In 2013, the Parliamentary Commission on Banking Standards recommended that banks put in place mechanisms to allow their employees to raise concerns internally (i.e., to 'blow the whistle') and that they appoint a senior person to take responsibility for the effectiveness of these arrangements. These recommendations were announced in a new policy statement from the FCA and PRA which requires banks to:

- appoint a Senior Manager as their whistleblowers' champion;
- put in place internal whistleblowing arrangements able to handle all types of disclosure from all types of person;
- put text in settlement agreements explaining that workers have a legal right to blow the whistle;
- tell UK-based employees about the FCA and PRA whistleblowing services;
- present a report on whistleblowing to the board at least annually;
- inform the FCA if it loses an employment tribunal with a whistleblower; and
- require its appointed representatives and tied agents to tell their UK-based employees about the FCA whistleblowing service

The NCA also coordinates the UK Protected Persons Service. It is responsible for providing protection arrangements to at-risk individuals, including witnesses but potentially also people assisting in serious criminal investigations and others including those in danger of honour based violence.

Limited Coverage

PCAW has been advocating the introduction of the Whistleblowing Commission's Code of Practice, a framework for organisations to embed good whistleblowing culture, to be underpinned by statute.⁸⁵ This has not been created under PIDA which has led to there being no baseline of quality with relation to whistleblowing systems.

The whistleblower protection contained in the 2015 Small Business, Enterprise and Employment Bill is still limited in the sense that it neither addresses blacklisting of job applicants who have previously blown the whistle nor whistleblowing in the armed forces and national security.⁸⁶ Furthermore there is new evidence that the UK's whistleblower protection regime is still not working. In a 2015 study the Institute of Business Ethics found that almost half (45 per cent) of employees surveyed were not willing to raise concerns about misconduct.⁸⁷ Another recent report by the Parliamentary Commission on Banking Standards offers a number of recommendations for the improvement of whistleblower protection and rights within the banking sector.⁸⁸

⁸⁵ <http://www.pcaw.org.uk/files/WBC%20Report%20Final.pdf> [Accessed 31 March 2016]

⁸⁶ <http://www.pcaw.org.uk/files/PCaW%20Policy%20Preferences.pdf> [Accessed 31 March 2016]

⁸⁷ https://www.ibe.org.uk/userassets/pressreleases/2015_eatw_pr.pdf [Accessed 18 April 2016]

⁸⁸ <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtpcbcs/27/27.pdf> [Accessed 31 March 2016]

4.3 Visa Refusal

Law	Detection/Deterrent	Enforcement (Beyond police)
Immigration Rules 2015	Under the immigration rules a person can be refused entry to the country on a number of grounds. Of these corruption or suspected corruption can be a reason for refusal of entry.	UK Visas and Immigration UK Immigration Enforcement

Overview

Refusal of a visa represents a new tool for the purpose of preventing corruption in the UK. If a person is suspected to have acted in a corrupt manner overseas and then seeks to enter the UK, that person can be denied a visa and entry on a number of grounds.

Key legislation

The Immigration Rules 2015 give clear guidance on grounds to refuse entry. There are a range of clauses that grant the UK authorities the power to refuse entry that could relate to preventing corruption within the UK. This power can be exercised when:

- the person has a criminal history;
- the person's exclusion would be conducive to public good;
- the Secretary of State has issued an exclusion/deportation order (which could be used to ensure a PEP accused of corruption and their family are not able to enter the UK);
- the person is subject to an international travel ban or on an international blacklist; or
- the person represents a threat to national security⁸⁹

Through these measures the UK Government can deny entry to a person they suspected of committing corruption offences or would commit corruption offences in the future.

According to the First Monitoring Report of the G20 Anti-Corruption Working Group,⁹⁰ the UK complied with the conditions of denial of entry as it had both power to refuse visa or entry for corruption related offences (CRO) and power to refuse visa or entry without conviction based on corruption related issues.

Enforcement:

The G20 Anti-Corruption Working Group report said that the UK has in the past refused entry on the grounds of corruption or associated offences; therefore the UK is covered in this aspect with its current laws and powers. This is enforced by UK Visas and Immigration UK Immigration Enforcement, but will be informed by correspondence with law enforcement such as the NCA and SFO.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457714/GGFR_Sec1v2_3_EXT.pdf [Accessed 31 March 2016]

⁹⁰ http://www.mofa.go.jp/policy/economy/g20_summit/2011/pdfs/annex08.pdf [Accessed 22 April 2016]

4.4 Transparency Measures

Law	Detection/Deterrent	Enforcement (Beyond police)
FOIA	Public authorities are obliged to release certain information about their activities while members of the public are entitled to request information.	Information Commissioner's Office (ICO)
Freedom of Information (Scotland) Act 2002 (FOISA)	Same as the UK FOIA, however applies to information held by Scottish authorities.	Scottish Information Commissioner's Office (SICO)
The Re-use of Public Sector Information (RPSI) Regulations 2015	Requires public sector bodies to permit the re-use of information.	No enforcement for non-compliance
The Local Government Transparency Code 2014 and The Local Government (Transparency Requirements) (England) Regulations 2015	Gives guidance on what information local government must publish and how	No enforcement for non-compliance
Transparency code for smaller authorities 2014 and The Smaller Authorities (Transparency Requirements) (England) Regulations 2015	Gives guidance on what smaller local authorities, for example, Parish councils, must publish and how.	No enforcement for non-compliance

Overview

Transparency is one of the main ways in which the UK Government seeks to detect and deter corruption and ensure the integrity of public bodies. TI-UK's policy paper "How open data can help tackle corruption" indicated how publication of a number of data-sets could lead to an increase in the rate at which corrupt behaviour was detected and also provide a deterrent to a range of corrupt offences.⁹¹

In particular it was indicated that:

- interests, gifts and hospitality registers would have an effect on detecting and deterring bribery
- registers of interest and performance information on services would have an effect on corrupt insider fraud
- registers of interest and minutes of official meetings could be used to detect and deter undeclared conflict of interest, misuse of public funds and abuse of power; and
- lobbying meetings data and minutes of official decision-making meetings would be integral to detecting and deterring lobbying abuse and political corruption

⁹¹ <http://www.transparency.org.uk/publications/how-open-data-can-help-tackle-corruption-policy-paper/>
[Accessed 4 April 2016]

Key legislation

Transparency measures have been acknowledged through a number of pieces of legislation which aim to make public authorities more transparent and accountable. The primary piece of legislation which ensures this is FOIA which requires public authorities to publish information on their activities, whilst members of the public can request any information these authorities haven't published. All public authorities in the UK are covered by FOIA and FOISA, with any individual, company or organisation able to make a request regardless of nationality. The Re-use of Public Sector Information (RPSI) Regulations 2015 broaden the scope of FOIA and FOISA in that they allow for the re-use of public sector information once it has been given to the public. In addition there are Codes of Recommended Practice ("transparency codes") for local authorities, which require them to disclose as much information as possible, including:

- all expenditure over £500
- all invitations to tender and contracts with a value over £500
- annual data in relation to senior employee salaries, grants, local authority land and
- organisation charts and pay multiples⁹²

Since 2015, local authorities are required to follow these Codes under The Local Government (Transparency Requirements) (England) Regulations 2015 and The Smaller Authorities (Transparency Requirements) (England) Regulations 2015.

Enforcement

The FOIA is enforced by the Information Commissioners' Office (ICO). There are a number of tools available to the Information Commissioner's Office for taking action to change the behaviour of organisations and individuals that collect, use and keep personal information. They include criminal prosecution, non-criminal enforcement and audit. The Information Commissioner also has the power to serve a financial penalty notice on a data controller.

The Re-use of Public Sector Information (RPSI) Regulations 2015 is also enforced by the ICO. However, although the transparency codes are mandatory under the regulations mentioned above, the explanatory memorandum for them state that "There will be no direct monitoring or review of these Regulations. Existing mechanisms will be used to enforce the Transparency Code". This raises questions as to how the Department for Communities and Local Government ensures the Codes are followed in practice and how members of the public seek redress for non-compliance by authorities.

⁹² <http://www.legislation.gov.uk/uksi/2015/480/contents/made> and <http://www.legislation.gov.uk/uksi/2015/494/contents/made> [Accessed 18 April 2016]

Immunity, restrictions or limited coverage

There are a number of exceptions applied to which data can be accessed under the FOIA. Requests can be refused if it would cost too much or take too much staff time to deal with the request, the request is deemed 'vexatious' or the request repeats a previous request from the same person.⁹³

TI-UK has identified 45 datasets and reports that either need to be published or improved in order to help detect and deter corruption in the UK.⁹⁴ In addition to this there is a general lack of enforcement around the speed and quality with which data is published, a possible reason for this is that there is no open data authority with the power to sanction departments and individuals for not proactively publishing open data.⁹⁵

The difference between the FOIA and open data could also be seen as a limitation. For the FOIA, information is requested rather than already available as would be under open data. Again, under FOI information is privately shared rather than publicly shared and information might not be reusable.

4.5 Proactive Investigative techniques

Law	Detection/Deterrent	Enforcement (Beyond police)
Regulation of Investigatory Powers Act 2000 (RIPA)	In particular: <u>Chapter 1</u> which relates to <u>Interception</u> , <u>Part II which covers Surveillance and covert human intelligence sources</u> and etc. This allows law enforcement to carry out covert investigation techniques without being in breach of the Human Rights Act 1998.	SFO NCA
Police Act 1997 (PA97)	Parts 2 and 3 creates provisions for <u>Authorisation of Action in Respect of Property</u> . This allows law enforcement to carry out covert investigation techniques without being in breach of the Human Rights Act 1998	SFO NCA
Data Protection Act 1998	Allows for the covert investigation of personal data which facilitates uncovering corrupt behaviour.	SFO NCA

Overview

To acknowledge the changing threat of corruption the NCA, SFO and police authorities are turning to proactive investigation and intelligence gathering techniques to increase the rate at which corruption is detected.

⁹³ <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/refusing-a-request/> [Accessed 31 March 2016]

⁹⁴ <http://www.transparency.org.uk/publications/how-open-data-can-help-tackle-corruption-policy-paper/> [Accessed 4 April 2016]

⁹⁵ <http://www.transparency.org.uk/publications/how-open-data-can-help-tackle-corruption-policy-paper/> [Accessed 31 March 2016]

Key Legislation

The use of covert techniques in the UK has been profoundly shaped by the introduction of the Human Rights Act 1998 (HRA) in 2000. This legislation codified the European Convention of Human Rights, thus giving UK citizens domestically enforceable human rights and freedoms.

Due to this, every time a covert technique is used it must be assessed as to whether it breaks or infringes upon the rights and freedoms of UK citizens. Where this is likely to happen, lawful authority for covert techniques can be gained from the RIPA and Part III of the PA97.

The following table shows which piece of legislation provides lawful authority for which type of covert activity:

Activity	Lawful Authority
Covert Surveillance	Part II – RIPA 2000
The conduct or use of Covert Human Intelligence Sources (CHIS)	Part II - RIPA 2000
Trespass to goods	Part III – Police Act 1997
Processing Personal Data	Data Protection Act 1998
Intercepting Telecommunications	Chapter 1 of Part I - RIPA
Obtaining Telecommunications Data	Chapter II of Part I – RIPA 2000
Trespass to Land	Part III – Police Act 1997

How Covert Techniques are used in Anti-Corruption Law Enforcement

The NCA and the SFO have a number of covert techniques available to them (their use is governed by the RIPA and Codes of Practice made thereunder):

Covert Surveillance capability: The close visual, aural or technical monitoring of a location or activities of an individual or a group. Tracking who a person meets with on a regular basis may display a corrupt relationship they have been hiding.

A digital forensic team: Digital forensics is becoming more and more important to anti-corruption investigations. It has become a vital way of getting information on bank transfers as well as digital communication.

Covert Human Intelligence Sources (CHIS): CHIS sources provide information on the intentions and operations of a range of corrupt targets. They can provide ongoing information on the corrupt practices of an organisation without being detected.

By using covert techniques both the NCA and SFO open up new information streams which can be used to detect corrupt behaviour. In the case of bribery this may prove important; according to the OECD 2014 Foreign Bribery Report law enforcement authorities only are only responsible for initiating 13 per cent of cases.⁹⁶

⁹⁶ <http://www.oecd-ilibrary.org/docserver/download/2814011e.pdf?expires=1449596286&id=id&accname=guest&checksum=3BA85C4B2056DAD3F39E827EC7532552> [Accessed 31 March 2016]

5. Supporting Measures

This section covers legislation which enables the UK to offer domestic support between law enforcement as well as offering support internationally. The enforcement bodies are covered as well as limits to the support the UK can offer. In particular, it considers two components:

- intelligence and information sharing; and
- Mutual Legal Assistance (MLA) and extradition

5.1 Intelligence and Information Sharing

Law	Support Measure	Enforcement (Beyond Police)
Crime and Courts Act 2013	<p>Section 5: The NCA is to have the function (the “criminal intelligence function”) of gathering, storing, processing, analysing, and disseminating information that is relevant to any of the following—</p> <p>(a) activities to combat organised crime or serious crime;</p> <p>(b) activities to combat any other kind of crime;</p> <p>(c) exploitation proceeds investigations (within the meaning of Section 341(5) of the POCA), exploitation proceeds orders (within the meaning of Part 7 of the Coroners and Justice Act 2009), and applications for such orders.</p> <p>Section 7: On information gateways to and from the NCA which could be used to share information about corruption threats</p>	<p>NCA</p> <p>HMRC</p>
Serious Crime Act 2007	<p>Sections 68 to 72 create provisions for public authorities to disclose relevant information to a specified anti-fraud organisation</p>	<p>NCA</p> <p>CoLP - National Fraud Intelligence Bureau</p> <p>National Police Service Lead for Economic Crime</p> <p>CoLP reporting hotline for fraud - Action Fraud</p>
POCA	<p>The Act also creates an offence of failing to report a suspicion of money laundering by another person (Sections 330 and 331). This provides the legal framework for the SARs regime</p>	<p>NCA</p> <p>SFO</p> <p>CoLP - National Fraud Intelligence Bureau</p> <p>National Police Service Lead for Economic Crime</p> <p>CoLP reporting hotline for fraud - Action Fraud</p> <p>CPS</p>

Overview

Information and intelligence sharing has taken on a prominent role as part of the UK's anti-corruption strategy. Sharing of information with those institutions which fall under the MLRs facilitates the prevention of corruption as PEP databases can be created to raise red flags to transactions.

Key Legislation

The Crime and Courts Act 2013 which led to the creation of the NCA and outlined its function put in place under Section 5 the “criminal intelligence function”) of gathering, storing, processing, analysing, and disseminating information that is relevant to any of the following —

- activities to combat organised crime or serious crime
- activities to combat any other kind of crime; or
- exploitation proceeds investigations (within the meaning of Section 341(5) of the Proceeds of Crime Act 2002)

This function has led to the creation of the NCA's Intelligence and Operations Directorate (IOD), including the National Intelligence Hub, Intelligence Collection, Investigations, Borders, International and Specialist Support.

Law enforcement anti-corruption information and intelligence sharing

The UK's anti-corruption intelligence sharing network is directed primarily by the NCA with assistance from law enforcement bodies such as the police. The NCA's IOD performs an intelligence sharing and coordination function in both at both a national and international level. It does this by working with partners to maintain an authoritative UK intelligence picture of serious and organised crime (the National Strategic Assessment (NSA)) to drive joined-up operational activity. This is undertaken by a multi-agency National Intelligence Hub. It also works with international partners to cut corruption through a network of International Liaison Officers (ILOs).

The NCA also plays a major role in the dissemination of information gained through the JMLIT. This is done through its coordinating role in the Operations group which carries out tactical intelligence and data sharing in a physically co-located hub.

Based within the NCA, the UKFIU shares and receives information with the Egmont Group of Financial Intelligence Units, a network of over 150 other countries. The information exchange facilitated by the UK's membership of the Egmont Group has the benefit of being informal, which increases the speed at which information can be shared. An Egmont Group publication indicated the high level of information sharing on behalf of the UKFIU; in 2010, the UKFIU reviewed 7,156 SARs which indicated possible corrupt PEP activity and disseminated 240 intelligence packages as a result.⁹⁷

In February 2014, the NCA in Scotland co-located with Police Scotland and other partners at the Scottish Crime Campus in Gartcosh. This co-location has allowed for the creation of a Joint Intelligence Development Unit which will aid the sharing of intelligence between the NCA and Police Scotland and facilitate more joint operational activity.

⁹⁷ <http://www.egmontgroup.org/library/download/229> [Accessed 31 March 2016]

Intelligence Gaps

Despite a commitment to building information sharing capabilities the UK's intelligence picture towards corruption and money-laundering has large gaps to be filled. As noted in the UK Government's anti-money laundering national risk assessment:

“There are significant intelligence gaps, in particular in relation to ‘high-end’ money laundering. This type of laundering is particularly relevant to major frauds and serious corruption, where the proceeds are often held in bank accounts, real estate or other investments, rather than in cash. UK law enforcement agencies want to know more about the role of the financial and professional services sectors (banks, legal, accountancy and trust and company service providers) in money laundering. They judge the threat in these sectors to be significant, and are still establishing the strength of understanding needed in this area.”

**UK national risk assessment of
money laundering and terrorist financing⁹⁸**

To address these intelligence gaps, the UK Government has resolved facilitate new information sharing gateways, amongst private sector bodies and between the private sector and law enforcement agencies.⁹⁹ The Government intends to work with the reporting sector to address issues of confidentiality which prevent effective information sharing.

⁹⁸

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468210/UK_NRA_October_2015_final_web.pdf [Accessed 31 March 2016]

⁹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundering_web_.pdf [Accessed 25 April 2016]

5.2 Extradition and Mutual Legal Assistance

Law	Support Measure	Enforcement (Beyond Police)
Crime (International Co-operation) Act 2003 (CICA)	The UK is able to provide a full range of legal assistance in criminal matters through powers contained in Part I of the CICA	UK Central Authority (UKCA) HMRC NCA CPS UK Visas & Immigration
Criminal Justice (International Co-operation) Act 1990 (CJICA)	The UK is able to provide a full range of legal assistance in criminal matters through powers contained in Sections 5 & 6 of the CRIJICA	UKCA HMRC NCA CPS UK Visas & Immigration
Extradition Act 2003	The Extradition Act 2003 enables the UK to deport those wanted for corruption offences elsewhere as well as request other countries to deport UK corruption suspects	CPS NCA Crown Office and Procurator Fiscal Service, if the person is in Scotland.

Overview

MLA is a mechanism which allows for cooperation between States for gaining assistance in the investigation or prosecution of corruption offences. MLA is generally used for accessing material that can't be obtained on a law enforcement (police to police) basis, particularly enquiries that require coercive means. MLA is also a vital tool in the pursuit of criminal finances including the recovery of the proceeds of crime that may have been moved and hidden assets overseas. According to the 2014 OECD report on bribery 13 per cent of cases came to the attention of the authorities through the exchange of MLA.¹⁰⁰ Extradition also plays a pivotal role in the successful prosecution of a corrupt person: if a corrupt person is on the run in another country, the person can still be brought to justice if the two relevant authorities cooperate to bring the person back to face trial in the first country.

¹⁰⁰ <http://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm> [Accessed 31 March 2016]

Key Legislation

Under the CICA and the CJICA, the UK is obliged to provide MLA to other countries. It is through these mechanisms that the UK fulfils its remit to promote international cooperation in reducing corruption. As well as this, through MLA treaties facilitated by CICA and CJIC, the UK can benefit from information held by other jurisdictions it needs to prevent corruption by freezing funds or arresting individuals.

MLA directly fulfils Article 46.1 of the United Nations Convention against Corruption (UNCAC) which provides that: "State Parties shall afford one another the widest measure of MLA in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention."¹⁰¹

Evidence suggests the UK system for requesting information was put to good use with the most recently publicised case being UK law enforcement asking the Nigerian Government for MLA on Alison-Madueke, the former petroleum minister.¹⁰² The G20 working group on anti-corruption rated the UK MLA system as 'prompt and effective' therefore it can be said the UK fulfils its global role in providing international cooperation on fighting corruption.¹⁰³

The Extradition Act 2003 gives the UK Government powers to deport those wanted for corruption related offences in overseas jurisdictions. Conversely it also allows the UK to request other jurisdictions extradite corruption suspects to the UK for trial. The UK has both extradited and requested extradition to corruption suspects in the past. In March 2011 the UK extradited Jeffrey Tesler to the USA to face bribery charges. In the case of the UK requesting extradition an example of this is the case of James Ibori who was extradited from Dubai to face charges in the UK.¹⁰⁴

Enforcement

MLA requests are processed through the UKCA. The NCA is the point of contact if the MLA request is between two police forces. Other bodies which can be contacted for MLA include HMRC, CPS and UK Visas & Immigration.

Extradition requests from category 1 territories¹⁰⁵ should be made to the NCA or to the Crown Office and Procurator Fiscal Service if the person is in Scotland.

Requests from Category 2 territories¹⁰⁶ need decisions by both the Secretary of State and the courts. The Secretary of State has no influence over the time it takes for a case to clear the judicial stages, and time a case takes to complete can vary depending on how complex the case is.¹⁰⁷

¹⁰¹ https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf [Accessed 31 March 2016]

¹⁰² <http://www.360obs.com/2015/10/corruption-charges-uk-officially-request-legal-assistance-from-nigeria-on-alison-madueke/> [Accessed 31 March 2016]

¹⁰³ http://www.g20civil.com/documents/Final_G20_Anti-corruption_Working_Group_progress_Report.pdf [Accessed 31 March 2016]

¹⁰⁴ <http://www.bbc.co.uk/news/world-africa-13100426> [Accessed 31 March 2016]

¹⁰⁵ These territories are the other 27 Member States of the European Union, and also Gibraltar.

¹⁰⁶ These are states outside the European Union. At present there are almost 100 states designated as category 2 territories

¹⁰⁷ http://www.cps.gov.uk/legal/d_to_g/extradition/ [Accessed 31 March 2016]

Limitations to Use of MLA

For both MLA and extradition dual criminality needs to be established before the UK can be receive or give MLA or request an extradition or extradite to another state. The UK generally only requires dual criminality for search and seizure, production orders (including banking evidence), and restraint and confiscation. A 'conduct' based approach is taken, i.e. the conduct underlying the alleged offence is considered when assessing dual criminality, rather than seeking to match the exact same term or offence category in both the requesting and receiving jurisdictions. In addition the Home Office has a list of grounds for refusing to give MLA.¹⁰⁸

Under extradition laws there is a list of 32 categories of offence for which the dual criminality test is not needed.¹⁰⁹ The offence must carry a maximum sentence of at least three years in the requesting state. If the offence isn't covered in this list, dual criminality must be established.

¹⁰⁸

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415038/MLA_Guidelines_2015.pdf [Accessed 31 March 2016]

¹⁰⁹ <https://www.gov.uk/guidance/extradition-processes-and-review> [Accessed 31 March 2016]

6. Legislation under consideration

The following Bills and measures were under consideration by the Houses of Parliament and UK Government during the period of research for this paper. If enacted, they would add to the legislative environment around corrupt behaviour.

Bank of England and Financial Services Bill

The UK's Parliamentary Commission into Banking Standards concluded that a lack of personal consequences for individuals was a principal cause of repeated misconduct by financial institutions. Until recently, it was expected that the FCA would adopt a new 'Senior Managers Regime' with a presumption of responsibility on relevant senior managers. Under the proposals, senior managers allocated with AML responsibilities would have been required to prove that they had taken reasonable steps to prevent money laundering from taking place, if such activity was found to have taken place within their firm. This presumption of responsibility has since been removed as announced in a recent policy paper.¹¹⁰ Instead senior managers from all regulated financial firms will be subject to a new statutory 'duty of responsibility' requiring senior managers "[to] take reasonable steps to prevent regulatory breaches in the areas of the firm for which they are responsible".¹¹¹ This comes as part of an expansion to the original plans which will see bankers be bound by a duty of responsibility from 7th March 2016 whilst being extended to cover insurers, investment firms, asset managers, brokers and consumer credit firms "during 2018".¹¹²

Corporate liability

The UK Government announced at the 12th May 2016 anti-corruption summit it will consult on extending corporate criminal liability for economic crimes to include certain activities, including money laundering, committed by their employees or agents. These measures would build on Section 7 of the Bribery Act 2010, under which failure to prevent bribery is criminalised. Extended corporate liability to a broader range of economic crime was first proposed in the UK's first anti-corruption plan in 2014.¹¹³ If the consultation results in this new offence it will increase prosecutors' ability to bring charges against corporate entities. Under current provisions, a 'directing mind and will' usually coming from a director or senior executive level needs to be found in order to prosecute the company.¹¹⁴ The new powers may require companies to evaluate their compliance procedures to ensure they adequately cover the prevention of all economic crime and not just bribery.

¹¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468328/SMCR_policy_paper_final_15102015.pdf [Accessed 31 March 2016]

¹¹¹ <http://www.out-law.com/en/articles/2015/october/bankers-presumption-of-responsibility-removed-from-senior-managers-regime/> [Accessed 31 March 2016]

¹¹² <http://www.out-law.com/en/articles/2015/october/bankers-presumption-of-responsibility-removed-from-senior-managers-regime/> [Accessed 31 March 2016]

¹¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388894/UKantiCorruptionPlan.pdf p. 14 [Accessed 18 May 2016]

¹¹⁴ <http://www.lexology.com/library/detail.aspx?g=34e9b39f-56a3-44af-a246-0c5f98fea897> [Accessed 18 May 2016]

Unexplained Wealth Orders (UWOs) and an Illicit Enrichment Offence

In its anti-money laundering action plan, the UK Government announced that it would be exploring the option of introducing UWOs to increase the options available to law enforcement to aid asset recovery.¹¹⁵ UWOs would reverse the burden of proof on foreign PEPs suspected of holding the proceeds of corruption and require them to explain the source of their funds. Failure to do so, or failure to do so to law enforcement's satisfaction, would result in their assets being frozen and potentially confiscated. In addition, the UK Government have also committed to assessing whether an illicit enrichment offence – as recommended under UNCAC – would be compatible with the UK legal system.¹¹⁶ By at least introducing UWOs, the UK Government would go some way to rectifying the current legislative deficit of having no illicit enrichment offence. UWOs are currently in use in Ireland, Australia and Colombia, although these measures are not used specifically to fight corruption.

Designation Power

The UK Government has also announced it will be looking into introducing powers to designate entities as 'primary money laundering concern' based on section 311 of the USA PATRIOT Act.¹¹⁷ These powers would allow banks and other firms are required to take special regulatory precautions in dealing with the entity in question, which would be intended to disrupt the activities of suspicious high risk entities and freeze them out of the financial system.

Improved asset seizure options

The UK Government identified in its anti-money laundering action plan that it was more difficult to seize possible criminal assets held in bank accounts. Therefore the Government intends to explore whether new powers are needed to enable the quick and effective forfeiture of assets held in bank accounts in cases where there is no criminal conviction against the account holder (because, for example, the account was opened under a false identity) and there is suspicion that the funds are the proceeds of crime.

Non-UK company beneficial ownership disclosure

The UK Government has started the process of considering how to bring transparency to non-UK company ownership. In a recent discussion paper it was mooted that in the future before buying a property or bidding for a public contract, a non-UK company would have to disclose its true owner.¹¹⁸ It is possible that this information could be stored on a publicly accessible register in a similar fashion to the UK PSC register. Another element that is being considered is whether these measures will apply to properties already owned through non-UK companies.

¹¹⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundering_web_.pdf [Accessed 25 April 2016]

¹¹⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundering_web_.pdf [Accessed 25 April 2016]

¹¹⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundering_web_.pdf [Accessed 26 April 2016]

¹¹⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512333/bis-16-161-beneficial-ownership-transparency.pdf [Accessed 27 April 2016]

Annex 1: specialist enforcement, prevention, investigative and oversight agencies involved in the policing of offences directed against corruption behaviour

City of London Police Overseas Anti-Corruption Unit
City of London Police reporting hotline for fraud - Action Fraud
City of London Police - National Fraud Intelligence Bureau
The Civil Service Commission
The Commissioner for Ethical Standards (Scotland)
Commissioner for Standards (Northern Ireland Assembly)
Committee on Standards and Privileges (Northern Ireland Assembly)
Committee on Standards, Procedures and Public Appointments (Scottish Parliament)
Companies House
Competition and Markets Authority
Crown Prosecution Service
Department for Business Innovation & Skills
Department of Enterprise, Trade and Investment in Northern Ireland
The Electoral Commission
Equalities and Human Rights Commission
Financial Conduct Authority
Gambling Commission
Her Majesty's Revenue and Customs
House of Commons Committee on Standards and Privileges
House of Commons Parliamentary Commissioner for Standards
House of Lords Commissioner for Standards
House of Lords Sub-Committee on Lords' Conduct and the Committee for Privileges and Conduct
Independent Parliamentary Standards Authority
Information Commissioners Office
The Insolvency Service
Local Electoral Registration Officers
Local Government Ombudsman
National Crime Agency
National Police Service Lead for Economic Crime
The Office for Government commerce (Government Procurement Service)

Propriety and Ethics group within the Cabinet Office
Public Prosecution Service
The Registrar of Consultant Lobbyists
Returning Officers
Serious Fraud Office
Single Point of Contact Officer (or SPOC) for electoral fraud
The Standards Commissioner (Welsh Assembly)
Standards of Conduct Committee (Welsh Assembly)

Some designated professional bodies also act as supervisory authorities, these are:

Association of Accounting Technicians
Association of Chartered Certified Accountants
Association of International Accountants
Association of Taxation Technicians
Chartered Institute of for Legal Executives
Chartered Institute of Management Accountants
Chartered Institute of Taxation
Council for Licensed Conveyors
Faculty of Advocates
Faculty Office of the Archbishop of Canterbury
General Council of the Bar
General Council of the Bar of Northern Ireland
Insolvency Practitioners Association
Institute of Certified Bookkeepers
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants in Ireland
Institute of Chartered Accountants of Scotland
Institute of Financial Accountants
International Association of Book-keepers
Law Society
Law Society of Scotland
Law Society of Northern Ireland
UK Immigration Enforcement
Scottish Information Commissioner's Office (SICO)
UK Central Authority
Crown Office and Procurator Fiscal Service
UK Visas and Immigration
National Offender Management Service (NOMS)

Annex 2: Acronyms

Advisory Committee on Business Appointments (ACOBA)
Anti-Money Laundering (AML)
Welsh Assembly Member (AM)
Bribery and Corruption Intelligence Unit (BCIU)
Commissioner for Ethical Standards in Public Life in Scotland (CESPLS)
Covert Human Intelligence Sources (CHIS)
Crime (International Cooperation) Act 2003 (CICA)
Criminal Justice (International Co-operation) Act 1990(CJIC)
Code of Standard Practice (CoSP)
Crown Prosecution Service (CPS)
Corruption Related Offences (CRO)
The Committee for Standards of Public Life (CSPL)
UK Department for International Development (DFID)
Deferred Prosecuting Agreements (DPAs)
Director of the Serious Fraud Office (DSFO)
Enhanced due diligence (EDD)
Local Electoral Registration Officers (EROs)
Financial Conduct Authority (FCA)
Financial Services Authority (FSA)
Her Majesty's Revenue and Customs (HMRC)
Information Commissioners' Office (ICO)
International Corruption Unit (ICU)
Individual Electoral Registration (IER)
International Liaison Officers (ILOs)
Independent Parliamentary Standards Authority (IPSA)
Money Laundering (ML)
Mutual Legal Assistance (MLA)
Members of Legislative Assembly (MLAs)
Member of the Scottish Parliament (MSP)
National Crime Agency (NCA)
National Offender Management Service (NOMS)
City of London Police Overseas Anti-Corruption Unit (OACU)
Public Concern at Work (PCaW)
Politically Exposed Person (PEP)
Public Interest Disclosure Act 1998 (PIDA)
Proceeds of Crime Act 2002 (POCA)

Political Parties, Elections and Referendums Act 2000 (PPERA)
People with Significant Control (PSC)
Police Scotland and the Police Service of Northern Ireland (PSNI)
Suspicious Activity Report (SAR)
Serious Fraud Office (SFO)
Single Point of Contact Officer (SPOC)
Returning Officers (ROs)
Representation of the People Act 1983 (RPA)
Tackling Corruption through Open Data (TACOD)
UK Central Authority (UKCA)
Financial Intelligence unit (UKFIU)
United Nations Convention Against Corruption (UNCAC)

